7 April 1978

MEMORANDUM FOR THE RECORD

STATINTL FROM : [redacted]
Office of General Counsel

SUBJECT : CIA and the Civil Service Reform Bill

1. The purpose of this memorandum is to summarize exactly where CIA stands at this point in time vis-a-vis the recently introduced Civil Service Reform Bill.

2. The Agency first received a draft of the Civil Service Reform Bill for our official comments on 9 February 1978, with a firm deadline of 17 February 1978 set for the receipt of our views on the bill. Despite the short deadline, a letter of response was developed by the Office of Legislative Counsel in coordination with the Office of General Counsel and the Office of Personnel. This response indicated in great detail the Agency's objections to every provision of the bill which we felt would be inconsistent with, or could be construed to interfere with or impair, the special statutory responsibilities and authorities of the Agency and the DCI.

3. In addition to our written response, representatives of the Agency vigorously made known our objections and concerns in the course of telephone contacts with officials of the Civil Service Commission and the Office of Management and Budget at both junior and senior levels. In every instance, the Agency was assured that CIA would be completely exempted from the provisions of the bill. Before the bill was introduced, efforts were made to obtain a copy of the amended version of the bill to study the language which was supposed to exempt the Agency from the bill. By obtaining an advance copy of the bill, we felt that we could make sure that the bill the CSC intended to introduce would completely exempt the Agency. However, we were informed that advance copies of the bill would not be made available. Furthermore, we were once again assured that the Agency was completely exempted from the bill.

4. After the bill was introduced, an examination of its provisions revealed that CIA had been given only a partial exemption from the bill. Although certain language in the bill might be interpreted as exempting the Agency from portions of the bill, we found this language unclear and confusing at best, and supportive of the Agency's inclusion in the bill at worst. A meeting was then arranged with

Arthur Burnett, Assistant General Counsel, CSC, so that we could personally present our problems with the bill as introduced, in a section by section analysis of it, and ascertain to what extent the CSC intended to exempt us from the bill. The meeting was arranged with Mr. Burnett because Mr. Burnett participated in the drafting of the bill at CSC.

5. The meeting took place on 21 March 1978. I attended along with STATINTL [redacted] of OLC. Tom Moyers, Legislative Counsel, CSC, also attended. We discussed the provisions of Titles I, II, IV, V, and VI, and how they would severely affect the Agency. Mr. Burnett indicated that the Title I exemptions were meant to apply to the whole Title, but a mistake restricted the coverage to one section of the Title. Mr. Burnett was then informed of our exemption from all laws regarding preference eligibles when we discussed the provisions of Title II. Also, it was agreed that if we were exempted from Title I, we would be automatically exempt from the Special Counsel provisions of Title II. It was acknowledged that the Agency would be exempt from Title II Merit Board Appeals to the extent that it is now exempt from CSC appeals.

6. Regarding Title IV (Senior Executive Service) and Title VI, Mr. Burnett indicated that the bill had been revised to exempt us specifically, pursuant to our official comments, but that the language of the bill was changed after the bill left Mr. Burnett. However, Mr. Burnett admitted that though the Commissioners had focused on exempting us from Title IV, the Commissioners felt that we should be exempted under the general exemption of subsection (c). It should be noted that the Agency had always argued for a specific exemption by name to this Title, because the subsection (c) exemption would conflict with Agency and DCI authorities. As for Title V, Mr. Burnett conceded that the bill gave the Agency no exemption from this Title's provisions. The upshot of the meeting was that Mr. Burnett suggested that we write a letter to the appropriate Committees of Congress, requesting a complete exemption from the bill. While the letter would have to be cleared by CSC and Mr. Burnett did not want to presume to speak for the Commissioners, he felt that the Commissioners would not oppose a complete exemption for us.

7. It was learned, subsequent to the meeting with Mr. Burnett, that Alan Campbell, the Chairman of the Commission, would testify before Congress. OLC, in coordination with OGC, prepared a set of materials for Mr. Campbell that would urge him to state for the record the intent of the CSC, as part of the Administration's policy, to exempt the Agency from the bill. The materials were designed to be incorporated in Mr. Campbell's testimony and included a fact sheet describing the nature of the needed exemptions, a summary of the fact sheet, and a statement to be read by Mr. Campbell which indicated a general intent to provide the needed exemptions. On the day of Mr. Campbell's testimony, Mr. Burnett assured us that our views had been cranked into Mr. Campbell's presentation.

STATINTL

8. Mr. Campbell testified on 4 April 1978 before the House Post Office and Civil Service Committee, along with his Vice Chairman, Jule Sugarman. [redacted] and I were in attendance. The prepared statements of Mr. Campbell (at Tab A) placed in the Committee record made no mention of the status of the Agency under the bill. Moreover, in the question and answer period, several exchanges between the Committee and Messrs. Campbell and Sugarman indicated that the attitude of the CSC on exemptions from the bill is still not settled. The exchanges that follow are based upon notes made by me at the hearing.

9. During the first exchange, Representative Shroeder asked the purpose behind allowing the general subsection (c) exemption in Title IV (SES). Mr. Sugarman replied to the effect that the subsection (c) exemption was aimed at the FBI, Foreign Service, and other excepted agencies, and was designed to be granted on a temporary basis, until the President could get such agencies to fully conform to SES. A surprised Representative Shroeder stated that this was not the way she read the provisions of the bill. Like Representative Shroeder, I was surprised by Mr. Sugarman's statement of intent regarding SES exemptions. Such an intent makes a specific Agency exemption by name more imperative.

10. In the second exchange, Representative Harris asked generally about the exemptions of Title I. Again it was Mr. Sugarman who replied. He answered to the effect that there was an intention to extend Title I coverage to all executive agencies. Mr. Sugarman then noted that if an agency like the FBI had security problems, the problems should be brought to the CSC for resolution. I found the possible application of this concept to Agency security problems alarming

11. The last exchange took place between Representative Taylor and Mr. Campbell. Mr. Campbell was asked how effective oversight could be achieved over the decentralized personnel systems which the bill allows to be created. Mr. Campbell responded to the effect that CIA, FBI, and the Foreign Service presently operate decentralized personnel systems and have done a fine job. However, Mr. Campbell went on to state that now decentralized personnel systems would be subject to careful auditing and monitoring by an outside entity. It could easily be concluded that Mr. Campbell's intent is to extend the auditing and monitoring provision of the bill not only to newly created decentralized personnel systems, but to existing ones as well.

12. In the day between the House and Senate hearings, Mr. Burnett suggested that we could get a senator to raise the question specifically as to whether it is the intent of the CSC to give the Agency a complete exemption. The idea was workable except for the fact that Mr. Burnett indicated that he could not say in advance what the answer of the Commissioners would be. The Senate hearings were conducted on 6 April 1978 before the Senate Governmental Affairs Committee. [redacted] and I were again in attendance. Besides Mr. Campbell and Mr. Sugarman, the remaining Commission member Ms. Poston, and James McIntyre of OMB were also present to give testimony. Mr. Campbell placed two

STATINTL

more prepared statements in the record (at Tab B), but they made no mention of the status of the Agency under the bill either. The question and answer period proved uneventful.

13. Mr. Campbell has been invited to return to the House for further testimony. I believe that it is necessary for this Agency to get on the record as a clear statement of Administration policy, that it is the intent of the CSC to completely exempt us in order to preserve the integrity of the Agency's mission and functions. I plan to recommend that a commitment to make such a statement be sought from Mr. Campbell by the DDA, or perhaps the DDCI.

STATINTL

Attachments

A

Approved For Release 2002/05/07 : CIA-RDP81-00142R000400010020-8

ADDITIONAL ORAL STATEMENT ABOUT

H.R. 11280

BY

ALAN K. CAMPBELL

CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

APRIL 4, 1978

I appreciate this opportunity to return to these hearings on H.R. 11280 to explore further the provisions of that bill and the related draft Reorganization Plan No. 2.

In reviewing our previous testimony on March 14, I have found that we did not have a chance then to respond fully to some of the important questions that were raised. If I may, I would like to mention briefly a few issues that we think warrant additional discussion or clarification; then I would like to turn attention to some additional areas of concern that have been expressed since the hearing.

VETERANS PREFERENCE

The first point I would like to discuss concerns the effect of H.R. 11280 on veterans preference in the civil service. The proposed changes have two basic objectives:

1. To focus the use of preference on the disabled and Vietnam veterans, and
2. To reduce the adverse impact of veterans preference on women and minorities.

We have tried to balance the conflicting equities involved, realizing that increasing opportunities for any one group necessarily reduce opportunities for others.

If H.R. 11280 is enacted, we estimate that over 3,000,000 non-disabled veterans will continue to be eligible for preference through 1981. That number should be viewed in the context that only about 150,000 selections are made from Civil Service Commission lists each year. If these provisions are not adopted, an estimated 23,000,000 additional non-disabled veterans would be eligible for preference in hiring. Most of them are veterans of earlier wars, have already settled back into civilian life, and are less likely to need extra help in securing jobs. That is why I believe so strongly it is important to focus on the disabled and the Vietnam era veterans.

I think you should also know that the proposed changes in veteran's preference fall far short of what women's organizations have urged.

POLITICIZATION OF CIVIL SERVICE

Several Members of Congress have asked whether the President's proposals could, in future years, make the career civil service more vulnerable to political intrusion and manipulation--in effect, to a return to a spoils system.

I think, on the contrary, that H.R. 11280 contains strong, positive safeguards against such a possibility. A little later, I would like to comment more specifically on that issue as it relates to the proposed Senior Executive Service.

DISCIPLINING EMPLOYEES

Several Members have asked why managers in the Government find it so hard to discipline employees. The procedure for firing an employee as outlined in laws and regulations appears simple and clear-cut on paper. Nevertheless, the number of employees dismissed during a year is quite low, and especially low when the reason is poor performance.

The reason, I think, is the manager's well-founded fear of what will happen to him or her and to the work unit in the event of an appeal following an adverse action.

The pattern includes long delays in resolving adverse actions, multiple layers of appeal rights with very complex procedures and overlapping appeals jurisdictions, putting the manager and his or her program on trial, and, very often, disciplinary actions overturned on narrow procedural grounds. The process is made even more difficult when the proposed action is for poor performance because the causes for the action are often more complex. To avoid all of that, managers sometimes go to extreme lengths to avoid taking necessary actions against employees, to the detriment of the morale and productivity of the work unit and the Government as a whole.

H.R. 11280 proposes some important reforms in the appeals process, but continues to assure that employees will have due process and protection of their rights.

ADDITIONAL CONCERNS ABOUT THE PROPOSALS

These points and others relating to veteran's preference, politicization of civil service, and disciplining employees warrant more detailed discussion than I have attempted here. However, I have an additional formal statement on these topics, and with your permission, I will submit it for the record.

Beyond those issues, however, in the interval since the previous hearing, a number of critical concerns have been expressed publicly

about H.R. 11280 and the draft Reorganization Plan No. 2. I believe these are important, and I would like to spend a few minutes to comment on four in particular. They are:

1. The proposed Merit Systems Protection Board will not have the mandate, the resources, or the degree of independence it will need to prevent or stop abuses of merit principles.

2. Policies for the civil service system will be made by a single official who is politically appointed and closely related to the President's office; not by a bipartisan Commission.

3. The proposed authority to delegate examining functions to agencies will lead to inefficiency, waste, confusion, and political favoritism in examining.

4. The power of politically appointed officials to transfer, reward, demote, or remove career executives in the Senior Executive Service will introduce political influence into the whole career service and will stifle healthy disagreement based issues affecting the public interest.

MANDATE, RESOURCES, INDEPENDENCE OF MSPB

Let me comment first on the issue of the mandate and resources of the Merit Systems Protection Board. This is really a question of whether the Board will be strong enough to stand up to agencies, to the Office of Personnel Management, and to the White House staff to prevent politicization of the career service.

One line of thinking is that MSPB should have its own corps of inspectors to review agency programs; that its budget should not go through the Office of Management and Budget, and that its reports should be sent to Congress as well as the President.

The mandate of MSPB will be found in the powers that are assigned to the Board and to its Special Counsel. Under H.R. 11280, the Board and the Special Counsel will have vastly more authority than the Civil Service Commission now has to pursue prohibited practices in agencies or in OPM, and to prosecute those who violate the rules of the system.

As for resources, the fear that OMB or an incumbent Administration will withhold support from the Board so it cannot function effectively is mere speculation without foundation in fact or knowledge of real prospect. Any number of agencies with equally vital and sensitive

programs could raise the same spector, with an equally slender relationship to reality. A purposeful attempt to starve the Board could hardly be kept from public attention or tolerated as being in the public interest.

The Board will have numerous sources to find out about prohibited practices in agencies or in the OPM without a duplicative inspection staff of its own. The sources include:

- Specific employee complaints,
- OPM evaluations of personnel management practices in agencies,
- MSPB's own special studies functions,
- MSPB's appeals traffic,
- General Accounting Office audits of agencies and the OPM,
- Equal Employment Opportunity Commission reviews of agencies and OPM,
- Union complaints,
- Congressional committees and individual Members of Congress,
- Public interest and citizens groups outside of Government,
- Whistleblowers from agencies or even within OPM,
- Plus the mere fact that a Special Counsel exists will inspire some people to come forward with information that otherwise would not surface.

The Board will have more clout to stand up to agencies, to OPM, and even to the White House, when necessary, than the Civil Service Commission has now. The Commission is perceived as being divided in its interests because it has both an enforcement role and a role of advising and assisting agency management. The draft Reorganization Plan No. 2 gives the Board the powers the Commission now has plus a Special Counsel, which CSC lacks. H.R. 11280 for the first time defines in law those personnel practices that are prohibited. It will lengthen the terms of Board Members to seven years and make them non-renewable. It provides for removal only for reasons of misconduct, inefficiency, neglect of duty, or malfeasance. Finally, we should not overlook the fact that MSPB's special studies of the state of merit systems will be powerful tools for keeping agencies and OPM in line with merit principles. The total proposal gives the Board more credibility than the Commission has in acting against merit system violations.

POLICY-MAKING IN CIVIL SERVICE

Let us turn to the concern about the fact that policies for the civil service system will be established by the Director of the Office of Personnel Management instead of by a bipartisan Commission. The fear is that the Director is too close to Presidential influence and therefore susceptible to political pressure in policy-making.

It is simply unrealistic to believe that the Director wilfully may inject political considerations into the personnel rules for the career system. The Director is fully subject to the personnel laws. H.R. 11280 puts the merit principles and prohibited practices into the law and provides MSPB as a watchdog. The Board will comment on proposed personnel rules and will be free to focus public attention on any policy matter it regards as contrary to merit principles. It would be a foolhardy Director indeed who believed, in the face of these considerations, that he held imperial sway over the policy field.

The close relationship of the Office of Personnel Management to the President is an advantage for the career service, not a threat. The President, like the chief executive of any large scale enterprise, needs the special advice the Director can give about personnel management matters. This has been a serious defect in organization in the past. The close relationship will highlight the importance of the personnel function, in the management of Government programs of all types. This close relationship, in turn, will emphasize the President's direct responsibility for the personnel system, including responsibility to carry out the merit system laws. This identification has not existed in the past.

DELEGATING EXAMINING FUNCTIONS TO AGENCIES

I would like to turn now to the concern about inefficiency, waste, confusion, and the possibility of political favoritism if examining of job applicants is delegated to agencies. Those were some of the problems in the examining program in the period before 1965 when the function was decentralized to Boards of Examiners located in Federal agencies but under the supervision of the Commission.

We are well aware of the deficiencies of decentralized examining in the past, but we also know about some of the problems of too much centralization, such as delays in filling jobs and poor matching of people and jobs. We are seeking authority to have a more balanced program--centralized examining for jobs that are common to many agencies and clustered at geographic points; decentralized for other jobs where that would provide better service to agencies and the public and prove cost effective.

The proposed authority to delegate examining is broad; its use would be measured and thoughtful. The plan would use performance contracts to set the standards of proficiency in examining that agencies would have to meet and to provide OPM a basis for reviewing agency efforts.

H.R. 11280 provides more safeguards against political favoritism in the examining process than existed during previous periods of decentralized

examining, and it provides machinery through the MSPB to investigate and act against violations. As a key element in this picture, the law, if enacted, would hold the head of the agency responsible for preventing prohibited practices, including those related to examining abuses. That would be a provision of law that has not existed heretofore.

POLITICIZATION OF SENIOR EXECUTIVE SERVICE

Finally, let me comment on the fear that politically appointed officials will be able to politicize the proposed Senior Executive Service and, through it, the whole career service, by means of transferring or removing career executives and substituting political favorites. The effect, in this view, will spread far beyond the 10 percent of executive positions that H.R. 11280 would make available for noncareer appointments and will seriously inhibit career people in expressing their true professional beliefs about program proposals that would be counter to the public interest.

It is true that the proposed Senior Executive Service is intended to be a system that will better allow agency heads to use their managerial resources. But the authorities that would be given agency heads do not constitute a license for political recklessness. The thought that, by contrast, the present system is better because it provides better protection against politicization is an illusion.

For example, under the present circumstances:

- There is no statutory limit to the number of non-career executive positions that can be established.
- There are no generally effective performance evaluation procedures for executives.
- There is no requirement for a Performance Review Board, including a career member, to advise on the evaluation of career executives.
- There is no Merit Systems Protection Board and there is no Special Counsel.

H.R. 11280 deals with these and other shortcomings in the present set-up. In addition, the proposed Senior Executive Service provides positive features that are badly needed in the Government. These include:

1. A system of incentives, including compensation, that will attract good managerial talent and reward good performance, both individual and organizational.
2. Providing for those who are prepared to undertake the risks associated with the greater challenges of the SES the buffer of a fall-back to a job outside the SES at no loss in base pay.
3. Greater flexibility in assignment of executives, allowing agency heads to make better use of the executive talent available.
4. Allowing individual executives to take on challenging assignments at the highest levels without giving up career protections.

5. Fostering better development of executive talent and providing continuing development during the executive's career.
6. A better balance between program continuity and policy advocacy in the management of public programs through more rational career/non-career selection options.
7. A heightened sense of accountability based on performance evaluation as the principal determiner of both job tenure and the reward system.

If it be charged that these proposals will stifle healthy controversy and moderate the urge for excellence, I must strongly disagree. I believe, on the contrary, that the Senior Executive Service provisions are necessary to permit the talents of government executives to be fully exercized.

Mr. Chairman, I and my colleagues will be pleased to answer any questions you or other members of the Committee may have.

STATEMENT OF ALAN K. CAMPBELL
CHAIRMAN, U.S. CIVIL SERVICE COMMISSION
ON H.R. 11280
BEFORE THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 4, 1978

I again want to express my appreciation to Chairman Nix and the Committee for the prompt initiation of hearings on H.R. 11280. As we reviewed our notes on the March 14 hearing, there were several points which appear to be of greatest interest to the Committee. I thought it might be helpful, in anticipation of further questioning at today's hearing, to provide additional information on some of the questions which were asked then. The points I wish to cover in this way relate to veterans preference, politicization of the civil service, and disciplining employees.

ON VETERANS PREFERENCE

The proposals on veterans preference in H.R. 11280 have two basic objectives: to focus the use of preference on the disabled and Vietnam veterans, and to reduce the adverse impact of veterans preference on women and minorities. We have tried to balance the equities involved, realizing full well that increasing opportunities for any one group necessarily reduces opportunities for others.

If the President's proposals are approved by the Congress, we anticipate the following results:

1. Disabled veterans would continue to receive ten point preference in examinations and to rise to the top of most civil service lists. In addition, they would continue to have preference over non-veterans as well as other veterans in reductions in force.

2. Disabled veterans, unlike other veterans, would be eligible for noncompetitive Veterans Readjustment Appointments through grade GS-7, without regard to level of educational attainment. Further, the fifty percent disabled veteran would, without time limitation, have statutory eligibility to be appointed noncompetitively to any position for which he qualified.

3. The non-disabled Vietnam veteran would have two new benefits. First, through September 30, 1980 he would have statutory eligibility for a noncompetitive Veteran's Readjustment Appointment, including positions at grades GS-6 and GS-7, as well as the current grades GS-1 through GS-5. Secondly, he and all other veterans could reopen any closed examination for which there is a register at any time.

4. All non-disabled veterans would continue to have five point preference until October 1, 1980. At that time, non-disabled veterans would be divided into four groups.

   A. Military officers at the rank of Major or higher who retired after October 1, 1980 would no longer have a five point preference in examinations. In our view their superior qualifications and pension rights mean they have no real need for preference.

   B. Enlisted personnel and lower grade officers who retired after October 1, 1980 would have preference of 5 points in examinations for only three years. Their lesser qualifications and limited pension benefits demonstrate, in our view, that they have a need for assistance in readjusting to civilian life, but only for a limited period of time.

   C. Non-disabled veterans who have been out of the military service for ten years or more by October 1, 1980, as well as those who reach a ten-year anniversary after that date, would no longer have five point preference in examinations. They would have had ample opportunity in ten years to readjust to the civilian economy even if a portion of that time was used for education.

   D. The remaining non-disabled veterans who have been out of the service less than ten years would continue to have five point preference in examinations until they reach the tenth anniversary of their discharge.

With all of these changes we estimate that over 3,000,000 non-disabled veterans will continue to be eligible for preference through 1981. That number should be viewed in the context that only about 150,000 selections are made from Civil Service Commission lists each year. If these provisions are not adopted, an estimated 23,000,000 additional non-disabled veterans would be eligible for preference in hiring. Most of them are veterans of earlier wars, have already settled back into civilian life, and are less likely to need extra help in securing jobs. That is why we believe so strongly that it is important to focus on the disabled and the Vietnam era veterans.

An important point to note is that, when a non-disabled veteran's preference expires under these proposals, it would not in any way mean the veteran could not get a Federal job. It simply means the veteran would compete without the advantage of extra points.

Through at least the next five years, women will continue to be considerably disadvantaged by veterans preference in hiring. But we feel that there should be a stated objective in reducing that disadvantage and in reducing it at an expressed point in time in the near future. There are too many women of superior qualifications who have no realistic possibility of serving the Government without action by the Congress to reduce the effects of veterans preference.

ON POLITICIZATION OF THE CIVIL SERVICE

Several Members of Congress have inquired whether the President's proposals could in future years lead to a return to the spoils system. We think, to the contrary, that H.R. 11280 contains strong, positive safeguards against such a possibility. It does that by:

1. Establishing political intrusion in personnel matters, political coercion by Federal employees and use of political recommendations for employment as prohibited personnel practices.

2. Creating a Special Counsel to prosecute those who engage in prohibited personnel practices and authorizing penalties which can be imposed by the Merit Systems Protection Board.

3. Authorizing MSPB, an organization quite independent of the President, to conduct special studies of agency compliance with merit principles.

4. Authorizing the Comptroller General to conduct compliance investigations.

5. Clearly fixing legal responsibility on agency heads and their delegatees to carry out the personnel laws properly.

For the first time there would be in place a truly effective system of checks and balances, a separate and independent office to which people can bring their complaints and which is not the same office being charged with abuse of the merit system, and a fixing of responsibility for merit system abuses.

The protections against politics described above pertain to the entire civil service system including the proposed Senior Executive Service. It is worth saying a few extra words about that Service because it will operate in different ways than we have been accustomed to. The Senior Executive Service would be limited to about 9,200 managerial positions at grades GS-16 and higher levels. Incidentally, about 3,200 of those positions are not presently in the general civil service system. They are mostly in other merit systems, such as the FBI, the Foreign Service and NASA.

The first point to note is that there would be a statutory requirement that 90 percent of the jobs be filled by career people. To achieve the status of a career senior executive, an individual will first have to pass a rigorous review of his or her managerial qualifications by a Qualifications Review Panel within the Office of Personnel Management. The individual must then be selected by the agency through a merit staffing process. That is, the agency must evaluate the relative qualifications of those interested in the particular job. The agency may not limit consideration to those in the agency, but may look either Government-wide or at people both inside and outside Government. OPM is to audit the agency's staffing operations.

In addition to the limit on the percentage of jobs which may be filled on a non-career basis, the law allows OPM to prescribe which types of jobs should be filled only by career employees. We anticipate these would include those jobs in which the public expects complete political impartiality; e.g. tax collection or law enforcement. These types of jobs will be called career reserved.

Finally, H.R. 11280, includes a series of restraints on the political executive's ability to displace a career executive. A new agency head may not separate, reassign involuntarily or give a performance evaluation to a career employee within 120 days after taking office; thus providing time for a fair appraisal of the career employee's ability and capacity to function under new leadership. Secondly, a career employee may not be removed from SES unless his work is found by the agency head to be unsatisfactory or alternatively to be found marginal for two out of three years. Such a finding must be preceded by a performance evaluation against established standards of performance. The evaluation recommendation is made by an agency Performance Review Board, which must include at least one career employee.

Agency heads may reassign career executives within the organization, but only to a position classifiable above grade GS-15. They may replace a career executive with a non-career employee only if that will not increase the proportion of non-career jobs authorized for the agency.

The net results of all these provisions, it seems to us, is that political appointees do have greater authority to utilize career senior executives where the needs of the organization will best be served and can remove those who are less than fully satisfactory in performance, but are constrained by the fact that they must staff their organizations preponderantly through career appointments.

ON DISCIPLINING EMPLOYEES

Several Members of Congress have asked why managers in the Government find it so hard to discipline employees. The procedure for firing an employee as outlined in laws and regulations appears simple and clear-cut. Nevertheless, the number of employees dismissed during a year is quite low, and especially low when the reason is poor performance.

At this point, it may be useful to clarify the facts about the number of employees who were dismissed in calendar year 1976. The total was 17,157. This figure includes:

- 226 who were separated for inefficiency based on unsatisfactory performance of duties.
- 2,287 who resigned in lieu of adverse action, some of whom may have done so because of poor performance.
- 4,261 who were terminated during their probationary periods.
- 240 who were removed because of some condition that existed before they were hired.
- 3,164 who were dismissed for some form of misconduct.
- 418 who were separated for suitability reasons.
- 4 who were separated under the Foreign Service system.
- 6,557 who were discharged for a variety of additional reasons that the data do not differentiate. (These were not subject to appeal to CSC).

We think it is significant to distinguish between discharges of employees who had appeal rights and those who did not. Approximately 2 million Federal employees had completed their probationary year and had thus acquired appeal rights. The overall discharge rate for these employees was about 0.3 percent and the discharge rate for unsatisfactory performance was less than 0.02 percent.

During that year, 4,261 employees were terminated during their probationary periods, before they had acquired civil service appeal rights. That was about 5 percent of the total number of people receiving career-conditional appointments that year.

There must be reasons why the number and percentage dismissed after they acquired appeal rights is so much lower than the number and percent dismissed before. There must be reasons why the number dismissed for unacceptable performance is so much lower than the number dismissed for other reasons.

The reason, we think, is the manager's well-founded fear of what will happen to him or her and to the work unit in the event of an appeal following an adverse action against an employee.

The pattern includes long delays in resolving adverse actions, multiple layers of appeal rights with very complex procedures, overlapping appeals jurisdictions, putting the manager and his or her program on trial, and, very often, disciplinary actions overturned on narrow procedural grounds. The process is made even more difficult when the proposed action is for poor performance because the causes for the action are often more complex. To avoid all of that, managers sometimes go to extreme lengths to avoid taking necessary actions against employees, to the detriment of the morale and productivity of the work unit and the Government as a whole.

In 1912 Congress established a standard that disciplinary actions should "promote the efficiency of the service." Later, the Veteran's Preference Act established certain procedural requirements to be followed in discharges for misconduct or non-performance. Still later the President extended these requirements to non-veterans in the competitive service.

On their face, both the standard and procedural requirements seem fair and workable. However, as we have learned and as the overwhelming proportions of managers and supervisors have told us, that isn't the way the system functions. Over the years a series of decisions by appellate bodies within the Commission and by the courts has steadily shifted the meaning of these words so as to favor the rights of employees and to erode the ability of managers to do their jobs. What was originally thought to be a simple, balanced, and fair procedure and standard, is no longer any of these.

Consider, if you will, two examples from decisions made by the Federal Employee Appeals Authority and Appeals Review Board.

1. An employee appealed to the Federal Employee Appeals Authority in 1973 on the basis that she had been fired because of discrimination. FEAA denied her complaint. She then appealed to the Appeals Review Board. ARB agreed that there was no discrimination. However, ARB noted that the wrong job title had been used in the original dismissal. On that basis, ARB restored her to duty with back pay.

Here is a case where the individual had two independent reviews of her complaint, suffered no real impairment of her rights, and yet, on a minor technicality, was restored to duty.

2. An employee was removed for submitting false information. The agency erred in not giving sufficient notice of the action it intended to take. Realizing the mistake, the agency amended the action to allow a full thirty-days' notice. When the employee was actually removed, FEAA restored him on the grounds that the agency should have started the process all over again with a new thirty-day notice period, rather than merely correcting the original mistake.

This is a case where the Government was forced to restore an apparently untrustworthy employee even though the individual had, in fact, been given every right to which he was entitled.

It has been suggested that H.R. 11280 does not guarantee a hearing for an individual in an adverse action situation. It is true that the bill does not require an agency to hold a pre-termination hearing. In fact, no such requirement now exists. Only two agencies, the Department of Health, Education and Welfare and the National Labor Relations Board, provide such hearings; and HEW is preparing to change its policy. I am, of course, aware that this Committee has voted for pre-termination hearings. I simply believe that this goes in the wrong direction and will further complicate the process of taking those actions which are in the best interests of the public.

The right to a hearing in cases appealed to the Civil Service Commission was granted only to veterans by law. An Executive order extended it to other employees not very many years ago. Less than half of the employees who file appeals request a hearing; the majority rely on the examiner to make a decision based on the records.

Section 7701 of the bill guarantees the employee a hearing by the Merit Systems Protection Board whenever there is a material issue of fact between the agency and the employee. This provision directly parallels the practice in Federal civil courts where a full evidentiary hearing is available only if there is a material question of fact. Section 7701 provisions for a hearing apply to adverse actions based on either unacceptable performance or unacceptable conduct. If the agency and the employee agree on the facts of what happened, there is little need for a hearing. The examiner can determine whether action taken against the employee was proper.

STATEMENT OF ALAN K. CAMPBELL
CHAIRMAN, U.S. CIVIL SERVICE COMMISSION
ON H.R. 11280
BEFORE THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 4, 1978

ERRATA

Page 2. Paragraphs 4A and 4B are corrected to read:

A. Military officers who retired at the rank of Major or higher would no longer have a five point preference in examinations after October 1, 1980. In our view their superior qualifications and pension rights mean they have no real need for preference.

B. Enlisted personnel and lower grade officers who retired would have preference of 5 points in examinations for only three years after their separation from active duty effective October 1, 1980. Their lesser qualifications and limited pension benefits demonstrate, in our view, that they have a need for assistance in readjusting to civilian life, but only for a limited period of time.

B

Approved For Release 2002/05/07 : CIA-RDP81-00142R000400010020-8

ORAL STATEMENT OF

ALAN K. CAMPBELL

CHAIRMAN, U.S. CIVIL SERVICE COMMISSION,

ON

CIVIL SERVICE REFORM AND REORGANIZATION

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

APRIL 6, 1978

Approved For Release 2002/05/07 : CIA-RDP81-00142R000400010020-8

ORAL STATEMENT OF ALAN K. CAMPBELL,

CHAIRMAN, U.S. CIVIL SERVICE COMMISSION,

ON CIVIL SERVICE REFORM AND REORGANIZATION

BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

APRIL 6, 1978

Mr. Chairman, I am pleased to be here this morning to discuss S. 2640, the proposed Civil Service Reform Act of 1978 and the proposed Reorganization Plan No. 2 of 1978, covering the Civil Service Commission and the Federal Labor Relations Council. With me are my colleagues, Vice Chairman Jule Sugarman and Commissioner Ersa H. Poston.

I have a written statement that describes in some detail the intended purposes and features of S. 2640 and Reorganization Plan No. 2. With your permission I would like to submit that formal statement for the record.

I would like at this point to make some brief introductory remarks expressing what I believe to be the importance of this Bill and Reorganization Plan to the Federal service and to the ability of the Government to fulfill its purpose of serving the people of this nation.

In our view, the Plan and the Bill are of equal importance in carrying forward the effort for civil service reform. Reorganization Plan No. 2 will establish a greatly improved organizational structure for personnel management and labor management relations at the top echelons of Government. The Civil Service Reform Bill provides substantive improvements in the Government's system of employment that are needed to make the system work better for managers, to give greater protection to employee rights, and to provide increased protection to the merit system as a whole against political intrusion.

This Reorganization Plan and Bill are the direct results of months of intensive study of the Federal personnel management system and of discussion and analysis of its perceived problems in a wide variety of forums. Hundreds of individuals, inside and outside of Government, contributed to the design of solutions to the problems. This has been the most comprehensive study of the Federal civil service in our national history.

The President's proposals for reorganization and reform of the Federal civil service are in line with a quiet revolution that has been taking place in public services throughout the Nation. At all levels of government--local, State, and Federal--concerned citizens, chief executives, and legislators have been taking a new look at established civil service systems to see why they are so heavily weighted with

outmoded procedures and inappropriate organizational arrangements.

Public service employment at all levels has become an increasingly important influence in American society. It has grown greatly in size, scope, specialization, complexity, and economic importance. It has also come to have a strong impact on the lives and activities of our citizens.

As the public focuses more attention on this growing impact of public employment in our society, it demands greater scrutiny of the philosophies and structures that govern public service employment systems. The ultimate aim of this public concern is to see that public service employment systems are well managed and are designed to permit speedy and effective services to the people at reasonable costs.

President Carter, in submitting these measures to Congress, described them as the "centerpiece" of his broad program to reorganize the Executive Branch. Changes in the structure of Government and realignment of programs and functions can succeed in bringing about real and lasting improvement in the performance of Government programs only to the extent that managers in that structure are permitted to manage and employees are aided in doing their work.

S. 2640 and draft Reorganization Plan No. 2 make major and badly needed changes to improve managerial capability in the Federal civil service.

They give managers in all Federal agencies and programs the tools and the incentives they need to carry out their responsibilities effectively and economically.

The Reorganization Plan and the Bill together provide greater flexibility in the management of virtually all Government programs. Our studies indicated that managers feel very strongly they are not able to carry out their program responsibilities because they are hemmed in and tied down by personnel procedures that are too rigid and complicated as the result of some features of the present laws, customs, and court decisions.

Let me cite a few of the measures to improve management capability that are in the Bill and the draft Reorganization Plan:

- Both the Plan and the Bill provide, when it is efficient to do so, for further delegation of personnel authority to agency managers, so the authority to hire, promote, train, and separate employees will be located where the work is done.
- The Bill establishes a Senior Executive Service in which both tenure and rewards are based on performance of the individual manager and of the work unit.
- The Bill sets up clear-cut procedures to deal with workers whose performance is unacceptable.
- The Bill establishes merit pay for key managers based on

performance, rather than automatic pay increases based on time served.

- The Bill gives more reasonable range of selection among qualified applicants in filling jobs.
- The Bill provides a new probationary period to try out newly-selected supervisors.
- The Plan and the Bill establish a new Office of Personnel Management to provide vigorous leadership to agencies and advice to the President on policies for personnel management.
- The Reorganization Plan establishes a neutral third party Federal Labor Relations Authority to oversee relations between government agencies and employees.

While the public is concerned about the effectiveness of its civil service, it also expects and demands fair treatment and proper conditions of employment for its workers. S. 2640 and the draft Reorganization Plan attempt to ensure that the proper and legitimate needs of employees are met and that the Federal civil service will be based on merit and equity. Assurances of merit and equity are made clear throughout the proposals:

- The proposals establish (initially through Reorganization Plan No. 2) a strong and independent Merit Systems Protection Board to consider and act on appeals and to conduct special studies of merit system operations.
- The Bill states in law the merit principles that should govern the Federal personnel system.

- The Bill specifies those personnel practices that are prohibited.
- The Bill assigns responsibility to the agency head and all subordinate officials to whom personnel authority is delegated for complying with the personnel laws.
- The proposals provide within the Merit Systems Protection Board a Special Counsel to prosecute those who violate provisions of the system and to protect "whistleblowers" from agency reprisals.
- The Bill extends to nonveterans by law appeal rights that now rest only on the base of regulations.
- The Bill ensures due process rights in adverse actions, including those relating to work performance.
- The Bill places greater emphasis on employee performance as the basis for advancement, training, and other personnel actions.
- The Bill provides greater equity to nonveterans, particularly women, in reductions in force.

The public also demands that the Federal civil service be free of improper partisan political influences. I would like specifically to address this point because of recent publicly expressed concern that certain features of the Reorganization Plan and the Reform Bill might lead to politicization of the Federal service.

First, let me point out that the present checks and controls in the civil service system have not been fully effective in deterring

deliberate efforts to undermine the merit system for political reasons. Adding more layers of procedures and review processes simply does not provide more protection against partisan political intrusion into the merit system.

There are no absolute guarantees against politicization of any public employment system. But to the extent that we were able to propose effective safeguards within a system that permits the Government to get its work done effectively, we have done so. I believe these safeguards are important, because they represent structural and legislative changes rather than mere exhortations.

I will mention a few of the safeguards built into Reorganization Plan No. 2 and S. 2640:

- The Reorganization Plan gives the Merit Systems Protection Board more independence from the President than the Civil Service Commission now has in cracking down on violations of merit principles.
- The Bill gives the Board the added strength and power it needs to withstand political pressures and to protect the merit system against improper political intrusions.
- The Bill establishes statutory prohibitions against making personnel decisions, such as appointments, promotions, disciplinary actions, and decisions concerning pay, on the

basis of political affiliation or other unlawful discrimination.

- The Bill for the first time limits by law the proportion of political jobs in the senior executive category and prohibits conversion of noncareer executives to career status without competition.
- The Bill provides for identifying executive jobs that require public confidence in their impartiality and reserving them for career appointees.

I believe this important Bill and Reorganization Plan go far in addressing the major problems confronting today's Federal personnel management system. Enactment will, I believe, be a giant step toward a civil service system for tomorrow that is better able to serve this Nation's needs.

I and my colleagues will be glad to answer any questions the Committee might have.

STATEMENT OF

ALAN K. CAMPBELL

CHAIRMAN, U.S. CIVIL SERVICE COMMISSION,

ON

CIVIL SERVICE REFORM AND REORGANIZATION

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

April 6, 1978

Approved For Release 2002/05/07 : CIA-RDP81-00142R000400010020-8

STATEMENT OF ALAN K. CAMPBELL,
CHAIRMAN, U.S. CIVIL SERVICE COMMISSION,
ON CIVIL SERVICE REFORM AND REORGANIZATION
BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
April 6, 1978

TABLE OF CONTENTS

Page

STATEMENT OF ALAN K. CAMPBELL,
CHAIRMAN, U.S. CIVIL SERVICE COMMISSION,
ON CIVIL SERVICE REFORM AND REORGANIZATION
BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
April 6, 1978

INTRODUCTION

Mr. Chairman, I am grateful for this opportunity to testify on behalf of the Administration about civil service reform and reorganization of the Civil Service Commission and the Federal Labor Relations Council. My colleagues on the Commission, Jule Sugarman and Ersa Poston, are here with me today. My remarks today are addressed principally to S. 2640, the Civil Service Reform Act of 1978. However, I will also comment on Reorganization Plan No. 2 of 1978, which will shortly be submitted by the President for your consideration. That Plan provides the framework for carrying out several provisions in this Reform Bill.

The Federal civil service system is in trouble. Most people view the Federal Government as a greater source of problems and red tape than of solutions to the needs of this Nation. This lack of public confidence has sapped the strength of many Government programs and depressed the morale of civil service employees and managers alike.

Many factors account for the current crisis in the civil service, but the most important relate to the accumulation of laws, regulations, and policies which have grown up over the last 95 years. Complaints about the civil service system are shared by managers and employees as well as the general public.

Managers in charge of Government programs claim that personnel management procedures seriously impede their efforts to be good managers. Employees believe they are not adequately protected from partisan pressures, will not get much recognition if they do good work, and can not get a fair shake if they register legitimate complaints. Much of the public believes that Federal employees are overpaid and underworked and have too much tenure.

Some of these beliefs - particularly those of the public - are exaggerated. But the complaints about the civil service system are held widely enough, and sufficiently based in fact, as to demand immediate attention.

Soon after our confirmation last year, the other two Commissioners and I, in cooperation with the Office of Management and Budget, began a

serious study of the charges being made by managers, employees, and the public. We found that some of these complaints could be traced to the layers of controls and procedures that have been added over the years to correct problems as they developed in the civil service system. While each such control may be defensible, their aggregation has produced a semi-paralysis in administration. Thus, it now may take six to eight months to fill many important jobs; nearly two years to resolve a discrimination complaint rather than the statutorily mandated 180 days; and many months to resolve an adverse action appeal. Other complaints are related to the present organizational structure for Federal personnel management. The central personnel agency - the Civil Service Commission - has had major new functions and responsibilities heaped on it that have caused serious stresses in its structure.

Our early analyses convinced us that the problems go back to the fundamental laws, rules, regulations, and organization that govern Federal personnel management. We further concluded that these problems are so pervasive and fundamental that merely patching the existing system will not solve them.

The Federal Personnel Management Project

We decided it was time to step back, look at the whole picture, see what the problems really are, and then try to devise lasting, system-wide solutions. To this end, the President set up the Federal Personnel Management Project in May, 1977 as part of his reorganization effort. This was a full-scale review of Federal personnel management laws, principles, policies, processes, and organization.

Leadership for the Project was drawn jointly from the Civil Service Commission and the Office of Management and Budget. I served as Chairman of the Project and Wayne Granquist of the Office of Management and Budget served as Vice Chairman. The Project was advised by a Working Group made up of the Assistant Secretaries for Administration of the Federal departments and their counterparts in major independent agencies. The Co-chairmen of the Working Group were Jule Sugarman, Vice Chairman of the Commission, and Howard Messner, Assistant Director of the Office of Management and Budget.

The Project had nine subject-matter task forces which worked under the day-to-day management of Dwight Ink and Thomas Murphy, the Project's Executive Director and Deputy Executive Director. The task forces were staffed primarily by experienced careerists drawn from many Federal agencies. The task force managers were selected from among highly-respected Federal executives, from industry, and from the academic world.

The Project scoured the Government for ideas about personnel management problems and what could be done to solve them. The Civil Service Commissioners, together with representatives of the Office of Management and Budget, personally went to all regions of the country and listened to the views of managers, unions, individual employees, personnel officials, equal employment opportunity officials, and State and local government officials.

We held hearings in Washington, D.C. and in nearby Virginia and Maryland to get the views of the large Federal employee populations in this area. Some members of Congress participated in those hearings. In all, we heard from over seven thousand people who had ideas about the civil service system.

The Project then developed option papers on seven broad topics and sent them out for comments to some 800 organizations and individuals. Typically we received 150 to 200 replies on each paper. By this means the Project obtained the views of an enormous range of knowledgeable people with widely varying concerns about the system.

This outpouring of ideas confirmed our earlier hypothesis: the problems of the civil service system will not yield to patchwork repairs. Some of the problems can be solved by administrative action within the context of the present personnel laws, and we will move to deal with those. Other major problems need changes in the fundamental laws governing the civil service. Still others need changes in the organizational structure for personnel management.

Problems in Personnel Management

And that is why we are here today. The need for reform may be illustrated by outlining ten of the most salient problems confronting the Federal civil service system.

1. Supervisors, employees, political leaders, and others are confused about what they may and may not do without violating essential merit principles.

2. Employees feel they cannot get a fair hearing when they believe political, arbitrary, discriminatory, or illegal personnel actions have taken place.

3. The dangers of exposing wrongdoing in Government may deter employees from "blowing the whistle," although it would be in the public interest for them to do so.

4. Excessive centralization of personnel authorities takes many types of day-to-day personnel decisions out of the hands of

line managers who nonetheless are held responsible for accomplishment in major program areas. Managers must go through extensive paperwork justifications to obtain Civil Service Commission approval of relatively minor decisions.

5. Over-centralized and restrictive systems for examining and selecting employees make it hard for managers to hire expeditiously the best qualified people and to meet their equal employment opportunity responsibilities.

6. Managers find a confusing array of regulations and procedures standing in their way when they seek to reward good work performance, to discipline employees, or to remove employees whose performance is clearly inadequate and cannot be improved.

7. The jumble of laws, regulations, and special provisions affecting executive positions makes it very difficult for agency heads to utilize their top staff most effectively, to hold managers accountable for program accomplishment, and to reward or remove them on the basis of performance. There is virtually no mobility of senior executives among Federal agencies.

8. Present laws provide pay increases primarily based on length of service and do not allow adequately for granting extra pay for better performance or for withholding pay increases when performance is less effective.

9. Research in civilian personnel management is completely inadequate, and statutory restraints prevent experimentation in new management approaches. Therefore, new ideas are not encouraged and, when developed, are often ignored, or are installed on a large scale without adequate testing.

10. The Federal agencies involved in grant-in-aid programs impose conflicting personnel requirements on State and local agencies, thereby unreasonably complicating their work.

Analysis of these problems reveals two central challenges to Federal personnel management. One is to build a stronger foundation for the protection of employee rights and the application of the merit concept. The other is to develop new approaches to personnel operations and administration, so that they may become aids rather than obstacles to effective management of the Government workforce.

At first glance these challenges appear contradictory, because we are accustomed to equating merit and employee protection with complex

procedural requirements, centralized review and approval processes, and intricate checks and balances. Too often, however, these measures have become the refuge of the unsatisfactory employee or the excuse for managerial failure to act.

The fundamental reforms proposed in the reorganization plan and Civil Service Reform Bill attempt to stake out the foundation points of a sound public merit system and the rights and manner of fair treatment of individuals in the system, while also providing those tools that are essential for public managers who are responsible for the efficient and effective accomplishment of the missions of the Federal Government.

Overview of the Reform Proposals

Before beginning my discussion of the proposed Civil Service Reform Act of 1978, let me mention a related matter.

The proposed Reform Act is the centerpiece of the civil service reform legislation that we will be proposing. It encompasses many of the basic features of civil service that are of central importance to the system.

The President will formally submit the reorganization plan for the Civil Service Commission, a draft of which he has sent to Congress for information, at a time convenient to the Governmental Affairs Committee. We believe that early approval by the Congress of the reorganization plan will enable us to put the new organizational structures in place in time to carry out the substantive reforms embodied in the Civil Service Reform Act.

Since the legislative proposal to reform the civil service is closely related to the reorganization plan, I would like to comment briefly on the contents of the plan.

REORGANIZATION PLAN NO. 2 OF 1978

The reorganization plan will divide the present functions and responsibilities of the Civil Service Commission between two new agencies, an Office of Personnel Management and a Merit Systems Protection Board. In addition, it will create a Federal Labor Relations Authority to replace the Federal Labor Relations Council and other organizational components of the Government's labor relations program.

The Office of Personnel Management will be headed by a Director, Executive Level II, and a Deputy Director, Executive Level III, appointed by the President and confirmed by the Senate. Provision is also made for five Associate Directors. The plan transfers to the Office of Personnel Management all the personnel policy making, operating, advisory, assistance, and evaluation functions previously assigned to the Commission. The Merit Systems Protection Board consists of a Chairman at Executive Level III and two members at Executive Level IV. They are appointed by the President and confirmed by the Senate. The Board will exercise almost all of the adjudication and appellate functions now vested in the Commission by law. The Board replaces the Civil Service Commission's Federal Employee Appeals Authority and Appeals Review Board. The new Board will handle matters formerly handled by those organizations except that, under the proposed Reorganization Plan No. 1 of 1978, most discrimination complaints under Title VII of the Civil Rights Act of 1964 would be heard by the Equal Employment Opportunity Commission. Reorganization Plan No. 2 establishes an Office of Special Counsel within the Board to investigate and prosecute officials who engage in prohibited personnel practices and to enforce the Hatch Act. The Special Counsel is an Executive Level IV position appointed by the President and confirmed by the Senate.

The Federal Labor Relations Authority replaces the existing Federal Labor Relations Council. The latter was established by Executive Order 11491 and consists of the Chairman, Civil Service Commission; Director, Office of Management and Budget; and the Secretary of Labor. The new Authority would have an Executive Level III Chairman, two Executive Level IV Members, and an Executive Level V General Counsel appointed by the President and confirmed by the Senate. Certain duties now performed by the Assistant Secretary of Labor for Labor-Management Relations would be performed by the Authority. The existing Federal Service Impasse Panel would operate as a distinct organizational entity within the Authority.

Problems in the Organizational Structure for Personnel Management

The basic problems in the present structure for Federal personnel management are worth specifying here, because the proposed Civil Service Reform Act has been framed in the context of a new structure.

First, the Civil Service Commission currently has so many conflicting roles that it is unable to perform all of them adequately. At one and the same time it is expected to serve the President in providing managerial leadership for the positive personnel management functions in the Executive Branch - that is, establishing personnel policies and advising and assisting agencies on personnel management functions - while also serving as a "watchdog" over the integrity of the merit system, protecting employee rights, and performing a variety of adjudicatory functions. As a direct result, the Commission lacks credibility in performing its merit protection functions with both employees and managers who recognize the inherent conflicts among these functions.

Second, the President lacks an appropriate staff organization for directing the positive personnel management responsibilities inherent in his position as Chief Executive. Whereas an industrial manager, a military commander, or subordinate Federal executive normally assigns personnel management responsibility to a key member of his executive staff, the President must rely on a semi-independent body separated by structure and tradition from the Chief Executive. As a consequence, Presidential effectiveness in directing Federal personnel management is weakened and problems do not receive the attention they should.

Third, as made painfully evident in recent years, The Civil Service Commission, despite its presumed political neutrality, has not been an effective deterrent to partisan political or other abuses of the merit system. Further, there is insufficient protection for employees - so-called "whistle-blowers" - who are harassed for calling attention to violations of laws and regulations within their agencies.

Fourth, the existing machinery for administering the Federal labor-management relations program is not fully integrated nor fully acceptable to employee organizations. The functions are fragmented among the Federal Labor Relations Council, the Federal Service Impasses Panel, the Department of Labor, and the Civil Service Commission, which has a special third-party role. The Council - which consists of the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor - is criticized by some as "management-dominated." The resolution of unfair labor practices also is criticized as relatively ineffective due to the current lack of independent enforcement authority within the third-party machinery.

Fifth, control over personnel management functions is so centralized as

to unreasonably increase paperwork, create system inflexibility, and cause excessive delays. This centralization requires the Commission to be deeply involved in processing a multitude of individual personnel actions and reviewing operational details. This prevents the Commission from giving sufficient attention to policy, oversight, and systemic improvements in Federal personnel management. Excessive centralization produces long delays in hiring and other job placement matters, and erodes the authority and accountability of line supervisors and managers. Employees' dissatisfaction with the Commission's performance in the protection of their rights is matched by managers' view of the Commission as an administrative bottleneck and source of excessive procedural obstacles.

The Merit Systems Protection Board

Reorganization Plan No. 2 and companion Civil Service Reform Act will go a long way towards solving these fundamental problems. The Merit Systems Protection Board will be an independent agency to adjudicate employee appeals and to investigate allegations of prohibited personnel practices and to prosecute offenders. Based on Reorganization Plan No. 2 of 1978 and implementing Executive orders and regulations, the Board will have jurisdiction over the following twenty-two different types of appeals:

1. Withholding of within-grade salary increases (5 USC 5335)

2. Removal of a hearing examiner (5 USC 7521)

3. Adverse actions against preference eligibles (5 USC 7701)

4. Adverse actions against non-preference eligibles in the competitive service (EO 11491, as amended)

5. Determinations by the Bureau of Retirement, Insurance, and Occupational Health concerning retirement applications and annuities (5 USC 8347(d) and 5 CFR 831.107, 831.1101-12, and 831.1205)

6. Restoration to duty following military service or following recovery or partial recovery from a compensable injury (38 USC 2023 and 5 CFR 302.501-03, 353.401)

7. Complaints of discrimination based on race, color, religion, national origin, age, or sex (29 USC 633a and 42 USC 2000e-16) (Under Reorganization Plan No. 1 of 1978, these complaints would go to the Equal Employment Opportunity Commission)

8. Employment practices administered or required by the Civil

Service Commission (5 CFR 300.104(a))

9. Terminations during probationary periods (5 CFR 315.806)

10. Reemployment priority lists (5 CFR 330.202)

11. Reduction in force (5 CFR 351.901)

12. Reemployment rights based on movement between Executive agencies during emergencies (5 CFR 352.209)

13. Reemployment rights following details or transfers to international organizations (5 CFR 352.313)

14. Reinstatement rights after service under the Foreign Assistance Act of 1961 (5 CFR 352.508)

15. Reemployment rights after service in the Economic Stabilization Program (5 CFR 352.607)

16. Reemployment rights after service under the Indian Self-Determination Act (5 CFR 352.707)

17. Retention of salaries of employees demoted to General Schedule positions without personal cause, not at their own request, and not in a reduction in force due to lack of funds or curtailment of work (5 CFR 531.517)

18. Disqualification of employees or applicants by the Commission based on suitability determinations (5 CFR 731.401 and 754.105)

19. Denials by employing agencies of regular or optional life insurance coverage (5 CFR 870.205 and 871.206)

20. Refusal by employing agencies to permit employees to enroll, or to change their enrollment, in a health benefits plan (5 CFR 890.103)

21. Determination by the Commission's Bureau of Retirement, Insurance, and Occupational Health that annuitants are not eligible to elect health benefits plans or to receive Government contributions related to such plans (5 CFR 891.105)

22. Appeals from an examination rating or the rejection of an application in connection with an administrative law judge position (CSC Minute Number 5 of April 29, 1974).

The Merit Systems Protection Board will also designate individuals to serve as chairmen of performance rating boards established pursuant to 5 USC 4305, and the Chairman of the Board will designate a representative who shall serve as chairman of all boards of review established pursuant to 5 USC 3383(b).

The Board will not have the authority to adjudicate appeals from examination ratings or rejection of applications (other than those pertaining to administrative law judge positions), from position classification or job grading determinations (other than those related to adverse actions), or from decisions of insurance carriers denying claims of employees, annuitants, or family members. These matters have been determined to be more suitable for administrative review to determine accuracy and consistency with the intentions of the administrative authority.

The appellate function will also be affected by Reorganization Plan No. 1 of 1978, which would transfer discrimination complaints to the Equal Employment Opportunity Commission. If a matter appealable to the Board covers both civil service and discrimination issues, both issues will first be decided by the Merit Systems Protection Board, and then the Equal Employment Opportunity Commission will have the option to review the discrimination issue.

The Merit Systems Protection Board will also have authority to conduct special studies to determine whether Federal personnel systems are operating in accordance with merit principles.

Redesignation of the Civil Service Commission as the Merit Systems Protection Board and excluding management assistance functions from that Board will provide employees a greater sense of impartial action on their appeals. The streamlining of appellate procedures provided in title II of the Civil Service Reform Bill will give employees speedy resolution of their appeals.

Establishment of the Special Counsel with investigative and prosecutorial authority will provide employees increased protection from improper managerial actions and increase the accountability of managers for the exercise of discretionary authorities. (Enactment of titles I and II of the Civil Service Reform Bill will further strengthen these safeguards.)

The Office of Personnel Management

Establishment of the Office of Personnel Management will provide the President with the personnel management staff arm that he needs. The Office will be in a better position to provide more constructive advice

to agency managers on personnel management matters than is possible in the existing organizational framework. Greater delegations of personnel authorities by the Office of Personnel Management will provide agency managers with authority that is commensurate with their responsibility for mission accomplishment. It will also permit the Office to shift a greater portion of its resources toward an expansion of technical assistance services to agencies aimed at improving the productivity, management, and quality of the Federal workforce.

The Federal Labor Relations Authority

The Federal Labor Relations Authority will integrate the third-party functions in the labor relations program under an independent and neutral body. The Authority will assume the functions of the Federal Labor Relations Council and Assistant Secretary of Labor for Labor-Management Relations (except standards of conduct for labor organizations). The Federal Service Impasses Panel will remain a distinct organizational entity within the Authority.

Improvement in the delivery of services to the public is dependent upon both stronger protection for the merit concept and improved management of the personnel functions of the Federal Government. I believe that the structural changes embodied in Reorganization Plan No. 2 of 1978 achieve this vital balance.

The Merit Systems Protection Board will provide protection against improper personnel actions and will ensure due process for employees affected by adverse personnel actions. The Federal Labor Relations Authority will provide the credible and effective organization that is necessary for resolving disputes between Federal management and recognized employee organizations and for ensuring that such disputes are settled quickly and fairly. The Office of Personnel Management will provide the President the means to carry out the personnel management functions inherent in his role as Chief Executive.

THE CIVIL SERVICE REFORM ACT OF 1978

TITLE I - MERIT SYSTEM PRINCIPLES

I would now like to discuss S. 2640, the Civil Service Reform Act of 1978. Title I of the Reform Bill establishes in law both the basic merit principles of the Federal personnel system and the specific personnel practices that are prohibited in this system. Title I expresses the responsibility and authority of the President and agency heads for assuring that personnel management in the Executive Branch is carried out in accordance with these merit principles. Specifically, it states that not only agency heads, but also those to whom agency heads delegate personnel management authority, are responsible for preventing prohibited personnel practices and for the proper execution of all civil service laws and regulations. Finally, title I recognizes the authority of the General Accounting Office to audit personnel programs for conformance with law and also for overall management effectiveness.

Personnel management in the Federal Government is based on the principle that the Government and the Nation are best served by safeguarding its career employees against improper political influences and personal favoritism and by recruiting, hiring, advancing, and retaining them on the basis of individual ability and performance without regard to political affiliation, race, color, national origin, sex, marital status, age or handicapping condition. A corollary principle is that employees who do not adequately perform, and who cannot or will not improve, will be separated. These tenets are among those commonly referred to as the "merit principles."

While these principles are implicit in the laws, Executive orders, rules, and regulations for administration of the Federal personnel system, and while Congress defined basic merit principles with regard to State and local governments in the Intergovernmental Personnel Act of 1970, no comprehensive statement of the merit principles that apply to Federal personnel management exists in current law. Therefore, the merit principles which shall provide the foundation for Federal personnel management are identified at the outset of this Reform Bill in section 2301 (p. 5 of S. 2640).

However, codification of merit system principles alone will not by itself prevent abuse of these principles. Experience has shown that existing legal authority is not sufficient to effectively prosecute those who abuse the principles. Moreover, currently articulated prohibitions do not make clear against which culpable officials and

employees disciplinary action may be taken; nor is the authority for investigating allegations of prohibited personnel practices and initiating disciplinary action as clear as it should be in all cases. This ambiguity has hindered past efforts to protect merit systems from abuse and to discipline those who have consciously acted contrary to merit principles. Therefore, S. 2640 specifies and prohibits eight types of actions and practices which violate the basic merit principles.

The prohibited personnel practices enumerated in title I are not all new; but in some instances they are the first expression of Congressional policy. Most may be traced to existing laws, Executive orders, rules or regulations of the Civil Service Commission. However, for the first time employee whistle-blowers are given express protection against reprisal actions for lawful disclosures of agency violations of laws or regulations.

Title I does not change the responsibility of agency heads for personnel management. They are still primarily responsible for the conduct of personnel management in their agencies. But the language makes clear that there is a responsibility on the part of all managers and those in a position to take or influence personnel actions to assure that their decisions and actions are consistent with merit principles. Clarification of the responsibilities of managers and enumeration of proscribed actions gives employees increased protection against arbitrary and capricious personnel actions and decisions.

Section 2303 (p. 12) does not actually increase the authority of the General Accounting Office, but calls attention to the need for broad-scale reviews of personnel system effectiveness as well as discrete functional audits. This will improve the ability of Congress to oversee the Federal civil service system.

TITLE II - CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

This title strengthens the Merit Systems Protection Board and offers new protections to Federal employees, establishes new and revised adverse action procedures and appeal rights, provides for new systems of appraising employee performance, and establishes new procedures for removal or demotion based on unacceptable performance and for appeals based on such actions. It also provides for greater delegations of personnel authorities to Federal departments and agencies.

Protection of Employee Rights

Title II increases the safeguards for employee rights and merit principles without infringing on the legitimate prerogatives or authority of managers. Sections 1201 (p. 17) and 1202 (p. 18) increase the independence of the Merit Systems Protection Board beyond that affordable under the reorganization plan by lengthening terms of Board members from six to seven years, by prohibiting appointment to more than one full seven year term, and by providing for removal by the President only for misconduct, inefficiency, neglect of duty, or malfeasance in office, after notice and hearing. The present Civil Service Commissioners may be removed at the will of the President. Section 1204 (p. 19) establishes the term of the Special Counsel at seven years, but without the non-renewability clause. Because of constitutional restrictions, no conditions may be specified for removal of the Special Counsel.

S. 2640 authorizes any Board member, the Special Counsel, or hearing examiner or any employee of the Board so designated to subpoena witnesses and documents, to seek a court order enforcing the subpoena, and to take or order the taking of depositions. The lack of such authority has sometimes prevented the Civil Service Commission from conducting fair hearings in the past.

Section 1206 (p. 20) establishes the responsibility and authority of the Special Counsel to investigate and act upon allegations of agency reprisals against "whistle-blowers." Specifically, the Special Counsel is authorized: (1) to stay a personnel action (such as reassignment to another geographic area) which could have a substantial economic impact on the employee if the status quo were not maintained during the Counsel's investigation - except in those cases in which the action is appealable to the Board; (2) to report a finding of reprisal to the agency head and to require appropriate action; and (3) to file disciplinary charges before the Board against those responsible for the reprisal. Title II authorizes the Board to impose disciplinary actions, ranging from reprimand to dismissal and fines of up to $1,000.

The protection of whistle-blowers is, in our judgment, essential to the improvement of the public service. Too often in the past such employees have experienced reprisals in the form of transfers to remote locations, demotions, removal of duties and responsibilities, or discharges from the agency. These employees have found agency grievance procedures unavailable or unsatisfactory in protecting their rights.

S. 2640 provides protection to those employees who give lawfully available information to Congress, the media, or the public showing that agency officials have broken a law, rule, or regulation. Inquiry into such circumstances may be initiated by a Federal employee or any member of the public, and the inquiry will be handled in confidence during the investigative phase, to the extent possible.

It should be clear that S. 2640 does not authorize the Special Counsel to determine the truth of an employee's charges. That is the responsibility of the agency head or, as appropriate, the Department of Justice or the President. It is intended that the Special Counsel shall have a duty to act only in those cases involving significant retaliation. His office should not become the recipient of complaints of every real or imagined slight or injury. Similarly, the Special Counsel may not act to protect the employee where there is a right of appeal available to the employee. The Special Counsel is required to maintain and make public a list of all non-criminal matters referred to the agencies together with the agency responses.

S. 2640 also authorizes the Special Counsel to report prohibited personnel practices and suggest methods of correction to the agency head and to the Office of Personnel Management.

Improvements in Adverse Action Procedures and Appeal Rights

Title II improves employee rights in the area of adverse actions and appeals. These changes will afford employees due process and prompt resolution of their appeals. I will address six of the most important changes. First, section 7511 (p. 36) extends statutory due process rights in adverse actions - now provided by statute only to veteran preference eligibles - to all competitive service employees. Employees in the competitive service who are not eligible for veterans preference now have the same rights as veterans in adverse actions and appeals only because of administrative action through Executive order. These rights cover actions such as removals, suspensions for more than 30 days, furloughs without pay, and reductions in grade or pay.

Second, the Office of Personnel Management is authorized to extend adverse action and appeals coverage to positions administratively excepted from the competitive service. Presently, employees in the

excepted service (other than those entitled to veteran preference) are entitled to only those rights which may be provided by agency regulations, without the right of appeal to the Civil Service Commission. Yet many of these administratively excepted employees are careerists within their agencies.

The rights extended to competitive service employees by Executive order are now established as basic employee rights. Consideration of equity and fairness - which is at the very heart of the merit concept - dictates that all employees with Federal career expectations should be accorded equal rights, rather than making their rights dependent upon their entitlement to veterans preference or upon an administrative determination that a competitive examination can or cannot be administered.

Third, section 7512 (p. 38) eliminates "reduction in rank" as an appealable adverse action. When reduction in rank was originally defined as an adverse action, many employees were not under uniform position classification, grading, and pay systems, and including reduction in rank within the adverse action coverage had meaning and served to protect employees. Under present circumstances, however, it is difficult to determine whether a reduction in rank will occur when an employee is reassigned to a different position without loss of pay or grade level. Thus, reduction in rank as an appealable adverse action now serves no useful purpose. It does cause pointless misunderstandings between employees and managers about what constitutes rank and is an unnecessary impediment to reassignments to meet the needs of the agency.

Elimination of "reduction in rank" as an appealable adverse action may reduce the rights of employees in certain circumstances, but does not have a significant impact on any substantive rights. An employee whose reassignment is found to be a reduction in rank generally gains little or nothing by his appeal, since no back pay can be awarded and the agency is free to effect the reassignment again under adverse action procedures which can have a stigmatizing effect on the appellant's employment record. Employees will still be able to appeal a reduction in grade or pay.

Fourth, section 7701(h) (p. 44) authorizes the Merit Systems Protection Board to require agencies to pay reasonable attorney's fees for employees who prevail in their appeals and show that the action was wholly without basis in law or fact. These costs are sometimes very high, and represent a difficult burden for an employee who has been subjected to such an action.

Fifth, the Board will be able to issue decisions expeditiously, by the provision of section 7701(b) (p. 42) which permits a hearing only where

genuine issues of material fact are raised. If such issues are not involved, a decision will be made based on the written record, including the representation of the parties. This will eliminate hearings in cases where hearings would make no difference in the outcome, and will leave more time for work on other cases.

Section 7701(c) (p. 42) introduces new criteria for judging appeals from employees who have been affected by an adverse action. At present, the only standard against which an adverse action may be taken is that it "promotes the efficiency of the service." The burden of proof is on the agency to meet that standard. Over the years a series of court and administrative interpretations has developed which Government managers see as tipping the scales of justice too strongly in favor of employees. As a result, managers are not acting in situations which clearly require discipline.

We have prepared an analysis of case decisions which illustrate a variety of situations where minor deficiencies in the agency's procedures or non-relevant substantive matters were used to overcome a clear case against an employee. In section 7701(c) we have sought to rebalance the scales to provide both a fair consideration of the employee's arguments and of the manager's judgment.

Under the new criteria the employee is required to show one of three things before the appeals officer: that there was a procedural error of sufficient gravity that it substantially impaired the employee's rights; that there had been an act of unlawful discrimination which influenced the agency's decision; or that the agency's action had been arbitrary or capricious -- that is to say, that there were no facts on which a reasonable person could conclude that the action was justified. It is intended that these three matters will be the only ones which will be taken into account by the appellate body. This provision will preserve the due process rights of employees and avoid unwarranted reversal of an agency's action. An employee may thereafter appeal the decision of the appeals officer to the Merit Systems Protection Board. The Board will utilize the review standards set forth in 5 C.F.R. 772.310 or similar standards.

New Systems of Performance Appraisal and Actions Based on Performance

Title II provides for new systems of appraising employee performance that will make it possible for agencies to do a better job of recognizing and rewarding good employees and of identifying and helping those who are just getting by or are not performing at the level required. Also, it establishes new procedures for removals or demotions based on unacceptable performance and for appeals of these actions. These procedures will make it possible to act against ineffective employees with reasonable dispatch, while still providing them with due process rights.

The present performance appraisal requirements are based on the Performance Rating Act of 1950. The purposes of that Act were to recognize the merits of employees and their contributions to efficiency and economy, to provide fair appraisals of employee performance, to improve employee performance, to strengthen supervisor-employee relationships, and to remove employees whose performance is unsatisfactory from their positions. These purposes have not been achieved. In part, this failure is attributable to inadequacies in the state-of-the-art for appraising employee performance. In other respects, the constraints and complexities of the present statutory provisions have made it impossible to administer a workable program that provides managers and employees the information they both need about employee performance.

Of the existing statutory provisions, one of the weakest is the requirement to assign summary adjective performance ratings. Such ratings are useless as a basis for rewarding superior performance, encouraging improved performance, withholding pay step-increases of employees whose performance is marginal or substandard, or removing employees for unsatisfactory performance because they do not provide enough information to make any of these decisions. The inadequacy of summary adjective ratings as a management tool stems from the excessively restrictive statutory criterion for assigning an "outstanding" rating, from subsequent changes in the General Schedule pay statutes governing the determination of entitlement to within-grade pay increases, and from the requirement to use adverse action procedures to demote or remove an employee for "unsatisfactory" performance.

Several different statutory and regulatory requirements govern performance appraisals and performance-related decisions. For example, quality step increases and incentive awards are granted under two separate chapters in title 5, United States Code. A single integrated framework for giving performance appraisals for all performance-related purposes is needed to better interrelate the various decisions that are made on the basis of work performance.

The principal changes set forth in sections 4302 (p. 29) and 4303 (p. 30) are fourfold: (1) abolishment of requirements for summary adjective performance ratings and appeals of performance ratings; (2) establishment of the requirement that performance appraisals made under a single authority are to be used as a basis for developing, rewarding, reassigning, promoting, demoting, and retaining or removing employees; (3) elimination of the requirement for the central personnel agency to give prior approval to agency appraisal plans, and extension to agencies of substantial latitude to design and operate performance appraisal systems; and (4) establishment of an altered procedure for demoting or removing employees for unacceptable performance.

Agencies will be required to take action, based on performance appraisals, to: (1) recognize employees whose performance significantly exceeds requirements; (2) help employees whose performance is unacceptable to improve; and (3) remove employees from their positions when their performance becomes unacceptable, after warning and an opportunity for improvement.

The new procedure for demoting or removing employees from the civil service because of unacceptable performance will provide the employee with at least 30 days written advance warning that his or her performance is not acceptable, permit the employee to be represented and to reply to the proposed action, and give the employee an opportunity to improve within a specified time period. As a safeguard against unwarranted actions, the new procedure will require a higher level official to concur if the decision is that performance has not been raised to acceptable performance during the notice period. The employee must then be demoted, reassigned, or separated within 30 days.

When no action is taken because the employee's performance improved during the notice period, and performance continues to be acceptable for one year from the date of the advance warning, the record of the unacceptable performance shall be removed from the employee's official personnel folder. This provision will ensure that when employees improve their performance to an acceptable level and maintain it at that level, they will be able to pursue their future careers with a clean slate.

Employees who are demoted or removed for unacceptable performance may appeal to the Merit Systems Protection Board. The standards under which a hearing is provided and the criteria against which the propriety of the action is tested are the same as those provided for adverse action cases in section 7701.

The new performance appraisal systems envisioned by this title will contribute to the goal of improving the quality of employee performance by establishing that certain personnel actions must be based on performance appraisals assigned under appraisal systems tailored to the workforce and mission of an agency. This will be to the direct benefit of the vast majority of Federal workers who do their jobs well and want to be judged on the basis of their performance. The increased emphasis on meaningful appraisals will impose additional responsibilities on managers, but it will also provide them with a more effective and equitable means of managing their employees.

Delegation of Personnel Authorities

Section 1104 (p. 15) gives the Office of Personnel Management authority to delegate personnel management functions, including competitive examining, to heads of agencies.

Over the years, various statutes have placed sole authority in the Commission for conducting certain personnel operations or for approving specific agency personnel actions. These requirements often become the basis for delays in hiring, complex administrative procedures, excessive costs, and unnecessary paperwork. In view of other program authorities vested in agency heads, such restraints seem incongruous.

In order to permit agency managers to evaluate job candidates and to take other actions related to job placement or other aspects of the agency head's personnel management responsibilities, the Civil Service Reform Act would vest authority in the President to delegate to the Director of the Office of Personnel Management any and all personnel functions provided in title 5 of the United States Code. The Director in turn would be permitted to redelegate such functions to agency heads, without regard to restrictions, prohibitions, or approval requirements on delegations set forth elsewhere in title 5.

To protect against possible misuse of authority, delegations would be accomplished through performance agreements which set forth the expected standard of performance. Agency performance would be monitored and corrective action taken under periodic audits by the Office of Personnel Management. Agency managers would not have authority to abrogate merit principles, veterans preference, or other generally applicable provisions of law or Executive order. Any prohibited personnel practice violations could be investigated and officials found culpable of such violations could be prosecuted by the Special Counsel before the Merit Systems Protection Board.

As envisioned, the Office of Personnel Management would delegate examining and other personnel management authorities to agencies on an individual basis, in accordance with their abilities and resources. Delegations would be carried out through a written performance agreement between an agency and the Office of Personnel Management. The latter would specify required levels of agency performance; conditions for internal redelegation and negotiability with employee organizations; reporting, review, and other oversight controls; and grounds for revocation, suspension, or modification of the authority. Over the next several years, the Office of Personnel Management will work with the individual departments and agencies to develop their capacity and willingness to accept responsibility for many of the operational activities now performed by the Civil Service Commission.

Increased delegation will accomplish two significant goals:
(1) personnel program activities will be improved since they will be

administered at the level where they are best understood and by the line managers most able to determine the specific requirements for their implementation, and (2) the Office of Personnel Management will then be able to devote its skills and resources to assisting the agencies in developing needed new programs and techniques and to refining its own ability to monitor and improve, on a Government-wide basis, the utilization of the Federal workforce.

Shifting the locus of personnel authority to the agency level will provide additional benefits. It will give agencies greater control over meeting their own staffing priorities, through all available means. In a short range and practical sense, it will lead to more timely filling of Federal vacancies. However, in future time it should focus agency responsibility for effective personnel management more cohesively. No longer should top agency managers view the total needs of their personnel management as being partly their concern and partly the responsibility of external sources.

TITLE III - STAFFING

This title provides increased flexibility in staffing and other personnel functions, modifies veterans preference provisions in examining and retention, establishes a new probationary period for initial appointments to supervisory or managerial positions, extends early retirement authority to reorganization situations, authorizes agencies to train employees threatened with separation due to a reduction in force for placement in another agency, and authorizes agencies to accept the services of unpaid student volunteers.

Staffing Flexibility

Title II authorizes greater delegation of personnel authorities. Title III goes beyond this to provide additional flexibility in the staffing functions of Federal agencies in several ways. Section 3309(g) (p. 54) replaces the "rule of three" with a "rule of seven" for selections from lists of people qualified for employment. It also grants the Office of Personnel Management authority to establish other procedures for referring names to agency selection officials. These changes will permit agency managers to exercise a more reasonable range of judgment in filling jobs.

Enacted 34 years ago, the present veterans' preference laws control the basic competitive examining system through which most applicants must pass to be selected for civil service employment. The proportion of veterans in Federal employment is now well above the national average for veterans, and the program can therefore be considered successful. There is, however, a problem in that the methods chosen to help veterans get Federal jobs back in 1944 are so specific that there is one and only one way in the entire merit hiring system to rank and select employees. The requirements under the preference statute for numerical ratings and the rule of three have had the effect of preventing the Federal competitive service from using newer and more effective and reliable procedures for considering and selecting candidates that are in use today among Federal agencies with independent merit systems and some State and local governments. In administering Federal examinations, we are now required by law to make overly fine distinctions among applicants with virtually identical backgrounds. Personnel measuring devices are not sufficiently precise to insure that individuals with the three highest ratings are always the best qualified for a position. Other individuals with lower ratings might be as well qualified. While continuing major emphasis on finding jobs for veterans through various employment avenues, we need to update the competitive examining system to make it a fairer and more reliable system for all applicants.

Modifications in Veterans Preference in Examining, Selection, and Retention

S. 2640 modifies the presently unlimited lifetime preference for non-disabled veterans in examining, selection and retention. It provides veterans preference to those who need it most, and for the period when such assistance is most needed. In particular, it will strengthen the preference rights available to disabled and recent Vietnam Era Veterans.

The veterans preference provisions discussed in the following do not apply to the Senior Executive Service set forth in title IV of this Act. Veterans preference will not apply to that new Service.

Veterans Preference in Examining and Appointment

Let me make clear at the outset that S. 2640 does not reduce the rights of disabled or other 10 point veterans. As I will explain later, there is actually an increase in their opportunities.

Veterans preference for the non-disabled was designed to give special treatment to veterans applying for Federal jobs, primarily to assist them in returning to civilian life and in catching up for that time spent in military service rather than in academic or civilian employment pursuits which enhance job prospects. With the exception of those with continued disability, veterans should, after a reasonable readjustment period, be able and be expected to compete on an equal basis with other job candidates.

After this readjustment period, however, the present lifetime preference for all veterans, regardless of need, imposes a severe hardship on well qualified candidates and denies the Government the opportunity to give equitable consideration to applicants with special skills who may be the best available candidates for particular positions.

Ironically, preference is now such common coin that it fails to give real advantage to those veterans who really need it. In the last few years many State civil service systems have also recognized the need to modernize veterans preference provisions and have enacted a variety of reforms, especially limitations on the number of times veterans may use their preference and time limits on the military service qualifying the veteran for preference.

As I indicated, title III will make no change in preference for disabled veterans or for spouses, widows, and mothers now entitled to preference. They will retain lifetime preference. Disabled veterans will still "float to the top" of certain registers in the manner now

provided by law. In addition, to recognize further the special obligations of this Nation to the needs of disabled veterans, section 3112 (p. 50) creates a statutory authority for the noncompetitive appointment and conversion to career employment of disabled veterans who are 50 percent or more disabled or who take a Veterans Administration prescribed vocational training course.

For non-disabled veterans, section 3303a (p. 51) will generally limit preference to ten years after discharge from military service. A briefer, three year period is proposed for retired enlisted veterans and retired officers below the rank of major or equivalent. These time limitations recognize that readjustment to civilian life typically occurs during the early years following separation from military service. Thus, preference will still be granted during the period in which special employment assistance is most needed.

No preference will be granted to non-disabled officers retired at the rank of major, the equivalent, and above. This is appropriate because, with their extensive military experience and training, retired officers at these ranks who are not disabled are unlikely to need special help in securing employment.

In summary, these changes, which are to be effective on October 1, 1980, will focus special hiring assistance on disabled veterans, and will continue to provide preference to most Vietnam era veterans during the critical period when the veteran is adjusting to civilian life. With all of these changes we estimate that over 3,000,000 non-disabled veterans will continue to be eligible for preference through 1981. That number should be viewed in the context that only about 150,000 selections are made from Civil Service Commission lists each year. If these provisions are not adopted, an estimated 23,000,000 additional non-disabled veterans would be eligible for preference in hiring. Most of them are veterans of earlier wars, have already settled back into civilian life, and are less likely to need extra help in securing jobs. That is why we believe so strongly that it is important to focus on the disabled and the Vietnam era veterans.

An important point to note is that, when a non-disabled veteran's preference expires under these proposals, it would not in any way mean the veteran could not get a Federal job. It simply means the veteran would compete without the advantage of extra points.

Through at least the next five years, women will continue to be considerably disadvantaged by veterans preference in hiring. But we feel that there should be a stated objective in reducing that disadvantage and in reducing it at an expressed point in time in the

near future. There are too many women of superior qualifications who have no realistic possibility of serving the Government without action by the Congress to reduce the effects of veterans preference.

In addition to the noncompetitive appointment authority for certain disabled veterans, title III contains other changes that will preserve or strengthen the rights of veterans. First, under section 3305 (p. 52) the rights of veterans are increased in that all veterans will be permitted to reopen closed examinations for which there is a list at any time during their eligibility for preference. At present, the right of non-disabled veterans to reopen a closed examination is much more limited.

Second, section 309 (p. 60) will extend agency authority to make Veteran Readjustment Appointments for Vietnam Era Veterans without competitive examinations until September 30, 1980. Unless extended, this authority is due to expire June 30, 1978. In addition, assistance to Vietnam Era Veterans is increased by the repeal of the one year time limitation on eligibility for Veteran Readjustment Appointments, by raising the grade ceiling on these appointments from GS-5 to GS-7, and by removing the 14 years of education limit for disabled veterans

Finally, while title III replaces the rule of three with a rule of seven, and permits the Office of Personnel Management to prescribe other referral procedures, veterans preference is to be preserved under any of these alternate procedures.

Veterans Preference in Reduction in Force

Under the current system for retention in reduction in force, all veterans (other than non-disabled military retirees regardless of rank who, under current law, are excluded from retention preference) enjoy absolute retention superiority over all nonveterans despite the fact that the nonveteran may have many more years of service or a record of outstanding performance. Section 305 (p. 56) changes would reduce the adverse impact on nonveterans and focus the advantage on those who most need it by providing lifetime absolute preference in retention for disabled veterans and absolute preference during the first three years of service for non-disabled veterans. It would grant, in addition to the credit they now receive for their military service, five years of additional length of service credit for retention purposes to non-disabled veterans who are beyond the three-year employment period, thus preserving a relative advantage equating normally to seven or more years of extra seniority over nonveterans. Moreover, after three years of employment most veterans would have become career permanent employees and therefore advanced to the highest reduction in force retention group.

Probationary Period for Supervisors and Managers

Section 3321 (p. 54) establishes a new probationary period for first appointment to a supervisory or managerial position. It provides entitlement to a position of no lower grade or pay than the position occupied prior to the supervisory or managerial assignment for new supervisors who do not successfully complete the probationary period.

Supervisory skill is difficult to predict and often bears no relation to the skills that employees may demonstrate in non-supervisory positions. Some competent individual performers do not in fact perform well in a supervisory role. This provision of title III recognizes that selection methods for supervisory or managerial positions are imperfect.

For new supervisors who do not work out but would be valuable non-supervisory employees, a trial period during which the newly selected supervisor could be removed from the supervisory position with a right to return to a non-supervisory position is a much needed management tool.

It will enable top Federal managers to select candidates for supervisory and managerial positions, so vital to agency effectiveness, without fear of "locking-in" someone who is better as an individual worker. The guaranteed right of return protects the rights of individuals and avoids the stigma of an adverse action.

Other Changes

Section 308 (p. 59) expands coverage of early retirement eligibility in reduction in force situations to cover also major reorganizations and transfers of function, as determined by the Office of Personnel Management. Section 306 (p. 58) allows agencies under certain conditions to train employees, who are threatened with separation due to a reduction in force, for placement in another agency. Section 3111 (p. 47) authorizes agencies to use the volunteer services of students.

Currently, employees can take advantage of the early retirement provision only when the Civil Service Commission determines that the agency is facing a major reduction in force involving removals of employees. The proposed legislation would expand the coverage of the early retirement provision to situations involving reorganization or transfer of function (as approved by the Office of Personnel Management), which may or may not involve a reduction in force.

The present system of early-out retirements has significantly reduced the disruption faced by agencies in dealing with a reduction-in-force situation. The expanded provisions of this bill should be at least

equally effective, facilitating more rapid adjustment of the workforce, benefitting employees who would otherwise face dislocation, and increasing the efficiency and economy of organizational transitions. In addition, they would lessen the adverse impact on employee morale and productivity when faced with potential job dislocation.

With regard to the training authorization, current laws do not permit the expenditure of agency funds to train employees for jobs outside the agency. We propose to allow employees who face separation because of reduction in force to be trained for jobs in other agencies. Thus, the Federal Government will be able to retain employees with proven ability and avoid the cost of severance pay, while minimizing the hardship to employees caused by curtailment, reorganization, or realignment of agency functions.

Section 3111 (p. 47) also authorizes Federal agencies, subject to regulations of the Office of Personnel Management, to accept the volunteer services of students who are enrolled at least half-time in a high school, college, graduate, or professional school. Because of a general statutory prohibition on the use of volunteer services, each agency must initiate a time-consuming process to obtain express statutory authorization in order to provide unpaid Federal work exposure for students. This provision will permit agencies to provide worthwhile educational work opportunities to student volunteers when this does not cause the displacement of Federal workers.

TITLE IV - SENIOR EXECUTIVE SERVICE

The United States Government is the largest employer in the Nation. Its programs are far-reaching, complex, and widely varied. They must be conducted with sensitivity to conflicting interests and under constant public and media attention, for they affect every citizen. To meet this responsibility requires an executive workforce that is carefully chosen, well-trained, motivated, farsighted, able to respond to events, and to achieve Presidential and Congressional goals.

Nevertheless, no fully effective Government-wide system exists today for selecting, assigning, developing, advancing, rewarding, and managing the men and women who administer the hundreds of Federal programs that are vital to the Nation. The Senior Executive Service is designed to provide such a system. Further, it will achieve the following specific improvements: (1) provide better management of the number and distribution of executive personnel; (2) treat in a more realistic fashion the career-noncareer relationships at the executive levels; (3) offer increased advancement opportunities to career executives; (4) give agency managers greater flexibility in assigning executives where they are most needed; (5) ensure the management competence of those entering the Service; (6) make executives more accountable for their performance and remove those whose performance is not fully satisfactory; (7) simplify the multiplicity of laws and authorities which presently govern the executive levels; (8) establish more efficient procedures for staffing executive positions; (9) provide equitable compensation linked with performance; and (10) increase opportunities for minorities and women to enter the executive levels.

Control of Number and Distribution of Executive Personnel

The number of supergrade and equivalent positions has grown substantially since 1949. However, comparatively little of this growth has occured in the so-called "quota" spaces administered by the Civil Service Commission. Most of the increase has taken the form of substantive actions initiated by individual Congressional committees and in the uncontrolled "non-quota" positions. The mass of authorities governing executive positions is so complex that it has prevented both Congress and the President from exercising effective control over either the total number of individuals in the executive cadre or the distribution of executive personnel among agencies and programs. Also, it is too unwieldy to allow for rapid response to changes in agency programs. It is extremely difficult to staff new agencies or programs since special legislation is necessary to provide for any substantial number of executive positions.

Under the Senior Executive Service, individual agency executive personnel requirements as well as Government-wide total strength will be set by a zero-based determination of need, and Congress will be advised biennially of Office of Personnel Management decisions about the executive manpower level. Between reviews there will be provision for adjustments to take care of emergencies, new or expanded programs, and discontinuance of programs.

Career-Noncareer Relationships at the Executive Levels

The existing system for designating career and noncareer positions falls short of assuring protection against politicization of the career service. Moreover, it is so rigid that it fails to provide agency heads sufficient legitimate flexibility to fill critically important positions with executives of their own choosing.

Managerial positions at the supergrade level are now classified as "career" or "noncareer" based on whether or not the incumbent will be deeply involved in the advocacy of controversial Administration programs, or will participate significantly in the determination of major Administration policies. The fact is, however, that executive positions do not array themselves neatly in these respects. In most cases, the responsibilities of executive positions do not fall at either end of the career/noncareer spectrum.

Under the Senior Executive Service, the designation of career and noncareer will be affixed to persons rather than to positions. Agency heads may fill a majority of positions with either career or noncareer executives. The total number of noncareer appointees Government-wide may not exceed 10 percent of the total Senior Executive Service - a figure reflecting the existing proportion of noncareer (political-type) positions at the higher grade levels. This statutorily-based ceiling of 10 percent on noncareer appointments will provide greater protection against politicization of the higher levels than presently exists under the present system that permits expansion of the noncareer total by administrative action. Very importantly, the Office of Personnel Management must reserve certain types of positions requiring absolute assurance of political impartiality, or the public's perception of political impartiality, for career executives. Such positions would include those in the Internal Revenue Service, investigative, and procurement organizations.

Career Opportunities

The often artificial distinctions now drawn between career and noncareer positions limit opportunities for career employees to undertake positions of the highest responsibility, including

Presidential appointments, without relinquishing their career identification. Under the present system, career employees who enter noncareer positions lose their career identity and then, when Administration leadership changes, leave the Government service at the same rate as noncareer executives who intended to serve only a short time. This represents not only a disincentive to career executives to assume positions of higher responsibility, but also a serious loss to the taxpayer of many experienced and talented Federal executives.

Career executives will be able to serve in the highest level positions in the Senior Executive Service without having to terminate their Federal careers, because they will retain their career status regardless of assignment. Moreover, career executives who accept a Presidential appointment requiring Senate confirmation will continue to be covered by the pay, award, retirement and leave provisions of the Senior Executive Service, and are entitled to placement back into the Service when they leave their Presidential appointments. Thus, trained and experienced career executives would not be lost to the Federal service; they would simply revert in assignment to a "general" or "career reserved" position.

Assignment Flexibility

The vast majority of career executives have had both their mid-level managerial experience and executive service in the same agency. This deprives both the Government and the employee of the rich benefits in competence and understanding which accrue from experience gained in a variety of agencies and programs.

The current rank-in-position system of classifying jobs, combined with ill-defined yet appealable protections against reduction in rank (which would be abolished under title III), limits reassignment and transfer opportunities for career employees and prevents the best use of executive talent. Furthermore, it fails to give adequate recognition to the impact of the individual on the job. The complicated processes of qualification review and position classification which must take place between an agency and the Civil Service Commission are time-consuming, expensive, and frustrating to officials who are charged with getting a job done.

There will be a strong emphasis in the Senior Executive Service on development and mobility of executives within and among agencies. The Reform Bill gives the Office of Personnel Management a positive duty to encourage and assist career employees in moving among agencies. Fulfilling this responsibility will be eased by eliminating the procedural restraints referred to above and by removing the implication of "fault" in reassignment fostered by the present concept of rank in position.

Together, these features would give agency heads greater latitude to determine which positions are especially crucial to program accomplishment at a particular time and to fill these positions with executives who are best fitted to them, while the 10 percent limitation on noncareer appointees would prevent increases in the politically-oriented component of the Senior Executive Service.

Managerial Competence

While most current incumbents of executive-level positions are highly capable, there are some who are not performing at an optimum level. One chronic problem is the appointment to managerial positions of highly capable professionals who are ill-prepared to take on their new responsibilities.

In the Senior Executive Service managerial qualifications of all career appointees must be approved by qualifications panels within the Office of Personnel Management composed of members from Government, the private sector, and the academic world. Once career employees have had their managerial qualifications approved by the Office of Personnel Management, relative qualifications for a particular position within the agency will be determined by the agency head. Agencies will be required to have systematic executive development programs to insure that talented employees in key positions below Senior Executive Service levels receive necessary preparation for managerial duties, and that the qualifications of Senior Executive Service members not only remain at a high level, but are further enhanced. Finally, career appointees to the Senior Executive Service will be required to serve a one-year probationary period.

Accountability

At present, executive performance is rarely evaluated rigorously in terms of program accomplishment or meeting goals in such areas as efficiency, productivity, quality of work or service and cost control.

Executives who are clearly ineffective can be removed, although a considerable effort is normally required to do so. It is virtually impossible, however, to remove an executive whose performance is mediocre. Nor do existing provisions properly permit rewarding executives for outstanding performance.

Executives in the Senior Executive Service will be evaluated regularly and at least annually with special emphasis on the achievement of agreed-upon organizational goals. This will be accomplished by using an agency board to advise the agency head on the proper rating. Executives who consistently perform in a mediocre fashion, as well as

those found to be severely deficient, must be removed from the Senior Executive Service.

Although executives will not be entitled to appeal removals on such grounds, they will have rights to regular discontinued service retirement (if they have at least 25 years of service or a combination of age 50 and 20 years of service) or placement in a career position outside the Senior Executive Service with salary savings. Thus, there is a balancing of the Government's need to assure that only top performers will occupy senior positions, while reasonably preserving the economic prospects of the executive who is willing to assume the tenure risks of the Senior Executive Service. These entitlements do not apply to an executive who is removed for misbehavior.

In addition, this title would provide that highly successful executives could receive substantial performance incentive pay. The coupling of required systematic evaluation of managerial performance with the ability to reward effective managers and to remove the incapable will pay high dividends in improved management of Federal programs.

Multiplicity of Authorities and Laws

More than 60 separate personnel authorities governing different categories of executive positions now exist. Some of these authorities cover several thousand positions. Others cover as few as one. In some cases, these authorities establish self-contained, separate personnel systems (like the Foreign Service). In other cases, they merely exempt certain positions from some of the requirements or conditions of employment of the general personnel system by which executive positions are otherwise managed. Most of these special systems were created because circumstances at the time made it difficult for the agencies to manage their employees under the personnel system that applied generally.

In its coverage of most executive branch agencies and personnel systems, the Senior Executive Service eliminates most of these authorities and laws. Government corporations and intelligence community agencies are excluded and additional Presidential exceptions could be made. Any Presidentially-excepted system could be included later by Presidential action without additional legislation.

More Efficient Procedures

The present system for establishing and filling executive positions is inefficient. The required justifications and analyses are time-consuming for both the Commission and the requesting agency.

Under the Senior Executive Service, the agency would have its quota of executive positions established in advance for a two-year period. Needed adjustments within limits could be readily made. The Office of Personnel Management would no longer classify positions by grade or determine if they are career or noncareer. It would determine if career candidates for initial entry into the Senior Executive Service meet managerial qualifications; the agency head would be responsible for approving qualifications for a particular position and for noncareer appointees. (This applies only to initial Senior Executive Service entry.) For movement within the Service - now 55 percent of all staffing actions - the agency head would have complete approval authority. Moreover, in filling positions from within the Government, prior certification of eligibility for the Service by the Office of Personnel Management would be the rule. Thus, there would be very little case-by-case qualification approval activity in the Office of Personnel Management.

Compensation

Under the Senior Executive Service, the President would establish at least five executive salary rates. All rates would be in the range between the sixth step of GS-15 and the salary of Executive Level IV Longevity pay increases would be abolished and annual performance awards substituted instead. Under the proposal, highly able executives could substantially increase (up to 20 percent) their compensation for a particular year through performance awards not subject to the ceiling on salary. The performance awards could be given to no more than 50 percent of the executives in the Senior Executive Service. We estimate that the total cost of awards will average about 5-7 percent of executive payroll.

For the most effective career executives the President could confer a personal rank and incentive award. Up to 15 percent of active executives could be given the personal rank of "Meritorious Executive," which would carry an incentive award of $2,500 for each of five years. No more than 1 percent of active executives could have the rank of "Distinguished Executive," which would carry an incentive award of $5,000 for each of five years.

The sum total of all payments to an individual executive - salary and performance and incentive awards - cannot, in any one year, exceed 95 percent of the salary of Executive Level II. This would provide a current cap of $54,625. For each year in which an executive receives a bonus, his or her retirement annuity would be calculated at 2.5 percent instead of whatever lower percentage he or she would normally be entitled to. The granting of these financial incentives will be subject to guidance by the Office of Personnel Management in order to insure that the distribution of awards is based upon actual

distinctions in performance. Any evidence of prohibited political preference is subject to investigation by the Special Counsel of the Merit Systems Protection Board.

Minorities and Women and Executive Development

Roughly half the top career positions in the Federal Government are held by individuals who entered the Government at junior levels and who have spent their entire careers in the Federal service. Despite this pattern, efforts to establish Government-wide executive development programs have received little support. Many agencies still lack effective programs for preparing incumbent and potential executives to assume assignments of increasing responsibility and complexity. Such programs are especially needed for women and minorities, who, as a group, are seriously underrepresented in top management ranks. The regular career promotion process is not functioning adequately to bring women and minorities into key management positions.

The Senior Executive Service mandates an open, systematic executive development program with special emphasis on identifying minorities and women for development. It is only in this way that an enduring solution to this problem can be achieved.

TITLE V - MERIT PAY

Title V provides authority to establish a merit pay system for supervisors and managers in grades 13 through 15 of the General Schedule. While part of the annual comparability pay raises may be granted to these employees automatically, the remainder will be used to partly fund merit increases. Within-grade salary increases will be replaced by merit increases which will be awarded only in recognition of superior performance.

Unlike the Senior Executive Service where performance pay is granted only for one year at a time, merit pay increases are actual increases in the employee's base salary and will continue in subsequent years.

The merit pay program will not be installed simultaneously in all agencies and at all pay levels. A great deal of preparatory work must be done in designing agency systems, setting standards of performance, and training individuals in the use of the system. It is our belief that the need to set performance standards is one of the most salutary features of the proposal. For the first time in many cases, managers will be told what is expected of them. We estimate that the system will first be applied in not less than one year. Two to three additional years may be required to fully install it at grades GS-13 through GS-15. On the basis of experience at these levels we may wish to recommend expansion of coverage to other grade levels and perhaps eventually to some non-supervisory personnel.

Although title 5 of the United States Code now requires that "pay distinctions be maintained in keeping with work and performance distinctions," the current method of within-grade pay advancement within the rate range for senior managers and supervisors and the extensive appeals mechanism are not truly supportive of this requirement. Further, the only additional tool for accelerating basic pay within a rate range is through the quality step increase. However, the amount which may be granted is small (one step is equivalent to approximately 3 percent of pay) and restricted (no more than one quality step increase each 52 weeks) relative to similar increases granted to outstanding senior managers in the private sector. Therefore, the manner in which within-grade increase funds are currently expended provides virtually no flexibility to make significant pay distinctions among senior managers and supervisors. Barely acceptable performers now generally experience the same progression through the pay range as do many exceptional performers.

The new merit pay system would remove the barriers to increased management discretion and reward quality job performance rather than time in grade. It would eliminate a virtually automatic entitlement

to pay advancement within the rate range and provide that an employee's pay be advanced on the merits of his or her performance rather than on length of service.

The language of Title V grants broad flexibility in the design of each agency's merit pay plan. There are, however, certain principles which will be generally applied. First, in granting increases the agency may take into account both individual performance and organizational accomplishment. Section 5401 (p. 108) requires that salary determinations take into account factors such as improvements in efficiency, productivity and quality of work or service, cost savings, and timeliness of performance.

The amounts available for merit pay will be determined by the Office of Personnel Management. They will be set so as to equal those estimated amounts which are not being paid through regular step increases, quality step increases, and the annual comparability adjustment. For example, in 1977 perhaps 50 percent of the 7.05 percent comparability increase plus the 2 percent ordinarily used for step increases might have been used for merit pay. This would have created a pool of 5.5 percent for merit pay.

Office of Personnel Management regulations will also address the distribution of merit increases and set maximum levels. It is estimated that a ceiling of 12 percent will be placed on the increase any individual manager may receive in a given year. No employee's basic pay may exceed the top rate for the salary range as a result of a merit increase.

The net effect of these changes is that employees as a group will receive neither more nor less than they presently do, but those individuals performing in a superior fashion will receive higher salary increases.

TITLE VI - RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

This title authorizes the Office of Personnel Management to conduct public management research, and to carry out demonstration projects to test new approaches to personnel management. It also permits the Office to waive specific portions of personnel laws in order to engage in controlled experiments in personnel management. The number of employees who can be affected by such experimental projects will be limited and the views of organized employees will be taken into account before such experiments take place. In addition, title VI includes proposals for improving intergovernmental personnel programs.

Public Management Research

The Government does not have an organized program of research to give it a factual basis for changes in personnel policies. Similarly, it lacks authority to conduct small-scale experiments on promising ideas. As a result, it is often necessary to make system-wide changes before ideas have been tested in practice.

Although Federal personnel management problems are growing in complexity, the Government invests little in civilian personnel research. In defense agencies, the Government has applied a rational approach to developing and buying major defense systems. Similar testing of new ideas occurs regularly in the physical and biological sciences. Comparable investment in research and experimentation in the management sciences has not been made. As a matter of fact, the Federal Government lacks a specific commitment to management research and a specific authority to support and conduct it.

Title VI would solve this problem by giving the Office of Personnel Management authority to support a public management research program which would be directly related to the management improvement needs of agencies. The Office could begin by making use of research completed or underway in State and local governments, the military services, the private sector, and universities. Beyond this, it would provide the Office the flexibility needed either to conduct research or contract out research projects to Federal agencies, State and local governments, educational institutions, public interest organizations, and the private sector. Finally, the Office would assume a leadership role in identifying public management research needs, reviewing proposed research projects, coordinating research activities, assessing the value of completed research, and applying research results to the solution of agency problems.

A modest investment of resources toward basic and applied public management research should produce enormous benefits in the form of new approaches, theories, frames of reference, and processes which would make more efficient use of existing individual and organizational resources. Additionally, the research effort would encourage innovation in the design, development, and execution of systems of personnel administration which would improve management of the Government's human resources and thereby improve delivery of service to the public.

Demonstration Projects

The maintenance of a dynamic personnel system requires the continual development and implementation of modern and progressive concepts, procedures, and work practices to facilitate improved employee performance and efficiency. What is needed is a mechanism to reduce the amount of risk involved by getting as many hard facts about the effect of proposed changes as possible. This proposed demonstration project authority would provide that mechanism.

By providing the Office of Personnel Management with the authority to conduct experimental demonstration projects, policymakers would be able to explore new concepts and approaches to particular aspects of personnel management at less cost and with less risk than whole-system changes would require. Equally important, it would enable the determination of the likely effects and ramifications of proposed policy changes before making commitments to put them into effect system-wide.

Pilot testing provides an opportunity to time-test new concepts, modify them, and as their feasibility is demonstrated, extend them a bit at a time throughout the Federal establishment. To be effective, test agencies need to be exempted during the testing period from a variety of legal constraints, delegations of authority normally retained by a central personnel authority, and variations from existing Federal hiring, retention, pay, discipline, and other authorities.

The research projects are intended to be responsive both to current operational problems and long-range needs. Efforts will be directed at producing results for immediate application and toward expanding the technical base for future applications.

The project plans would include evaluation requirements to measure the results of the experiments. Experiments which test out favorably could be, with appropriate legislation or executive authorization, permanently authorized for test agencies or extended to other agencies.

In summary, this demonstration project authority could solve some of the problems personnel directors face daily in such areas as personnel selection, career development, motivation, personnel retention, training methods, and organizational structures. New and different approaches can be tested and their merits evaluated. The best and most progressive work practices and techniques would be further developed, installed, and used for the most efficient conduct of the Government's business.

In the long run, the authority to conduct research and to carry out demonstration projects to test new concepts, methods, and procedures will provide employees greater protection against ill-conceived personnel system changes which could impact adversely on their well-being. At the same time, managers would not have foisted on them impractical personnel management concepts. The title includes a requirement to publish proposed projects in the Federal Register and to consult or negotiate with unions. This will provide a measure of protection to employees against demonstration projects which could adversely affect employees during or subsequent to the life of the project.

Intergovernmental Personnel Program Improvements

Title VI also deals with Federal personnel requirements that are now conditions for State and local government participation in Federal grant programs. Currently, State and local governments are burdened by Federal personnel requirements that differ from Federal grant program to grant program, are applied unevenly, and are often inconsistent.

This title establishes a flexible yet uniform approach to Federal requirements by abolishing all statutory personnel requirements except those contained in the Intergovernmental Personnel Act, those prohibiting employment discrimination, and those in the Davis-Bacon and Hatch Acts. Federal agencies would be able to require State and local agencies to have personnel administration systems that meet the simplified and consistent personnel standards prescribed by the Office of Personnel Management.

Title VI improves the intergovernmental mobility program by extending eligibility to participate in mobility assignments to a wider range of Federal agencies and to organizations representing member State or local governments; associations of State or local public officials, and nonprofit organizations offering professional advisory, research, development, educational or related services to governments or universities concerned with public management. The title also corrects present inequities in the pay and benefits of mobility assignees.

CONCLUSION

Our studies have made us realize that the subject of civil service reform touches on the interests of many types of groups and many individuals in American society. They include unions, civil rights organizations, women's groups, veterans' organizations, civil service reform groups, professional associations, public interest organizations, consumer's groups, associations of State and local governments, academicians, and leaders in business and industry. We believe that we heard from them all and know what they think about these subjects.

No single set of proposals could possibly satisfy so many diverse interests. Some groups will support these proposals, while others will oppose parts of the package. We think the proposals are balanced and fair to all of these interests.

But most important, these proposals, taken with the other reform measures we plan and the additional pieces of legislation being developed, will put the Federal civil service back on the road toward better service to the public. I believe it is without question that a soundly structured personnel system, providing for effective management of a carefully selected, well trained, motivated, and fairly treated work force, is essential to good Government. The net result of the proposals we are here to discuss today will be to achieve these ends, to the benefit of all the people of this Nation.

Mr. Chairman, that concludes my formal statement. I will be glad to answer any questions the Committee might have.